



Scottish Government Consultation on Alcohol Advertising

An Evidential Analysis - May 2023

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Executive Summary

In November 2022, the Scottish Government published a consultation document which proposed significant restrictions and prohibitions on alcohol advertising. The document is heavily peppered with what it says is an evidential basis to justify these proposals. In my analysis, I have examined the plethora of academic and other materials referred to in the consultation, in order to explore whether the conclusions drawn are justified, and to assess the strength of any causal link between advertising restrictions and alcohol consumption/harms.

There are a number of outcomes arising from my assessment.

- There is no probative evidence which provides a clear and causal link between the advertising of alcohol, and consumption of alcohol.
- There is no probative evidence which provides a clear and causal link between the advertising of alcohol, and alcohol-related harms.
- The consultation relies heavily on a single source, a lobbying paper produced by Alcohol Focus Scotland (AFS), which agitates for advertising prohibitions to be introduced.
- The overwhelming majority of academic sources cited in the consultation, and the AFS paper, do not hold themselves to be evidence of a causal link between alcohol advertising and consumption or harm. When properly read, these studies offer clear caveats on this point. None of these caveats are explored or even acknowledged in the consultation or AFS paper, which is of concern. For example, the consultation claims that “*evidence indicates that drinking behaviours adopted in the formative teenage years track strongly into adult life*”. However, the evidence on which this particular statement is based actually says “*existing evidence is of insufficient quality to warrant causal inferences*”.
- A trend of statements which appear unsupported by the actual evidence offered by the Government continues throughout the consultation. These are all unpicked in my full analysis, but here are some examples:

What the Consultation Claims	What the supporting evidence actually says	Para
Children and Young people link alcohol brands in line with marketing strategies	“There was little mention of advertising as important to shaping a products appeal”	3.7
Research supports a link between exposure to marketing and consumption	“no association was found between uptake of drinking and baseline awareness of alcohol marketing”	3.12
Irish studies show that 9 out of 10 adults reported seeing alcohol advertising in the last month	These recollections were imbued with false memories: “around half of participants recalled seeing advertising on public transport despite this activity being prohibited”	3.33
Marketing increases overall consumption	No evidence of this, in fact the CREDOS report shows the opposite.	3.35
Children and Young people are exposed to alcohol in newspapers	“The analysis fails to demonstrate that alcohol advertisers are targeting youth”	10.3

- There is one academic paper which does advance the argument that a causal link has been established (Sargent & Babor (2020)), however, that paper is not based on any new studies or research. It is a position piece, based on a review of other studies, *none of which themselves say causality is established*, and in my assessment cannot be held out as evidence of a causal link (see my analysis at **3.11**).
- The consultation appears to have uncritically accepted some of the positioning put forward by AFS. For example, the suggestion that alcohol is more available because “*the number of places selling alcohol has increased considerably*” is materially incorrect; the number of such places in fact has fallen significantly, from 19,623 in 2007 to 16,560 in 2021/22. The Scottish Government ought to have offered correctives such as this; and ought to have conducted an independent assessment of wider claims.
- The consultation fails, in my assessment, to justify the rationale for such significant intervention. For example, whilst there is a great deal of exploration of how advertising *might*



impact children and young people, there is no analysis of the available information on actual consumption and harm of these groups in Scotland. In fact, there has been a continued fall in weekly drinking amongst the 13- to 15-year-old cohort since at least 2004, and as of the 2021 figures, this had dropped to around 7%, an overall fall of approximately 58% across that period. There has also been a 34% fall in alcohol related stays for 15-19 year-olds from 2008/09 to 2018/2019. This is reflective of an overall falling trend in the wider population since a high in 2008. None of this contextual detail is acknowledged or explored as to whether the proposed interventions are proportionate.

- A number of the claims in the consultation which are linked to children or young people rely on academic evidence which does not in fact relate to those groups, but to drinkers of legal age. “Young drinkers” is a phrase which appears on a number of occasions but in fact this refers to adults aged 18 or over, not under-age drinkers. This is never acknowledged or explained.
- Equivocation is presented with studies that come from other jurisdictions which are (a) of some vintage, and (b) from a regulatory landscape cannot be fairly contrasted: Ireland in 2007 is not Scotland in 2023, California in 2000 is not Scotland in 2023.
- The consultation presents “evidence” from 9 other countries which have introduced advertising restrictions. However, in each case, there is no analysis of whether any of these has actually had an impact on consumption or harm. In fact, in each one of these nine countries, consumption and harms have risen, or there has been no discernible impact.
- No analysis has been conducted as to the impact on culture, tourism, economy, employment or local communities should advertising prohibitions be introduced. Robust policy has to consider all implications, positive and negative.
- The consultation is silent on the vast body of academic studies which have found health benefits from moderate consumption of alcohol (see 7.1).
- There is no discernible attempt to interrogate or acknowledge the body of academic evidence which presents a contrary view, or is critical of, the need for or benefits of advertising restrictions. I was able to locate a number of such studies (for instance, Siegfried et al (2014)) which I explore in this paper. The impression given, therefore, is that the Government has already reached a view, and has done so absent cognisance of the full picture.
- The consultation focuses, in some parts, not on whether a prohibition is necessary or proportionate, but in analysing how easy it might be to introduce it. This approach dispenses with proportionality and is therefore an error of law.
- The consultation does not consider the practical implications on licensing authorities and on retailers in relation to proposals around “in shop” restrictions.
- There is a focus on Low/No products being positioned merely as “gateway” products to alcoholic variants, ignoring available contrary evidence as to the benefits of such products (see 9.13). Only one view is presented.
- Lastly, I believe there needs to be further discussion over how the categorisation of data as *evidence* is presented. There is a difference between academic “best guess” and material fact. There is also a difference between anecdotal evidence in the form of “lived experience”, and material fact. I explore these topics in the Conclusions section.



Part One: Overview

Introduction

I have been asked by the Scottish Alcohol Industry Partnership (SAIP) to conduct a critique of the evidential basis for conclusions and inferences drawn in the Scottish Government consultation “Restricting Alcohol Advertising and Promotion”. In particular, I am asked to:

- Review any assertion or evidence that the advertising of alcohol increases consumption
- Review any assertion or evidence that the advertising of alcohol results in harm
- To consider whether the policy proposals are justified, necessary or proportionate to the evidential base
- To consider how the proposals sit within the existing licensing and legal framework
- To have particular regard to any evidence of causality

Background

The Scottish Government consultation, “Restricting Alcohol Advertising and Promotion”¹, was launched on 17 November 2022. Maree Todd MSP, the then Minister for Public Health, summarises the purpose of this in her Ministerial Foreword as follows:

“By restricting alcohol marketing in Scotland we hope to reduce the appeal of alcohol to our young people. This will support a reduction in consumption of alcohol and subsequently improve their health and health prospects as adults. It will also reduce the potential triggering effect that alcohol marketing can have on heavy drinkers and those in recovery or treatment. Restricting alcohol marketing will also support our ambition to change our troubled relationship with alcohol.”

The consultation is a set of extremely wide-ranging proposals, which include the following measures:

- An outright ban on all alcohol advertising in all public places
- Banning alcohol advertising and sponsorship in sport
- Banning alcohol advertising and sponsorship in events eg festivals and local community events
- Banning alcohol from being seen in shop windows
- Moving alcohol into an adults only “shop within a shop” in shops
- Hiding alcohol behind the till like cigarettes
- Banning alcohol brands from being used in merchandising such as distillery hats or brewery branded glassware
- Banning advertising alcohol-free variants of alcohol brands, seeing these as “gateway” products to the alcoholic versions
- Restricting the information shown on alcohol product labelling to state-sanctioned “facts” such as geographical origin or ABV
- Banning “brand-sharing”
- Restricting online advertising

The deadline for responses was 9 March 2023.

In his inaugural address to the Scottish Parliament as First Minister on 18 April 2023, Humza Yousaf MSP said:

“...it is clear that some of the proposals have caused real concern to an industry which is already facing challenges on multiple fronts. I have therefore instructed my officials to take these ideas back to the drawing board, work with the industry, and crucially with public health stakeholders, to agree a new set of proposals. I believe that all of us want to reduce the harm

¹ <https://www.gov.scot/publications/consultation-restricting-alcohol-advertising-promotion/>



caused by alcohol, particularly to young people - but without undermining Scotland's world class drinks industry or tourism sector. I am hopeful that by taking a fresh look at this issue, we can find a way forward which achieves both of these crucial aims.”²

Policy History

It is perhaps worth noting the policy history for context. Many of the present proposals first appeared, in the context of the Scottish Parliament, in a member's bill consultation introduced by Labour MSPs Dr Richard Simpson (1999 to 2003 and 2007 to 2016) and Graeme Pearson (2011 to 2016), entitled “Shifting the Culture” which was released in March 2012. This resulted in the Alcohol (Licensing, Public Health and Criminal Justice) (Scotland) Bill³ which got as far as the Stage 1 debate on 4 February 2016. MSPs did not support the “general principles” of the Bill, so it fell at that stage. However, the then Minister for Public Health, Maureen Watt MSP, said in a letter⁴ from January 2016 that proposals around advertising of alcohol would be “*best addressed through the next phase of the Alcohol Framework*”.

This was all, therefore, swirling around in the background at the time the Scottish government then pressed on, in November 2018, with publication of the anticipated **Alcohol Framework 2018**. This is a high level, macro policy framework called “Preventing Harm: Next steps on changing our relationship with alcohol”⁵. In this, the government committed to the following (amongst other steps):

- “*We will press the UK government to protect children and young people from exposure to alcohol marketing on television before the 9pm watershed and in cinemas – or else devolve the powers so the Scottish Parliament can act.*”
- “*We will consult and engage on the appropriateness of a range of potential measures, including mandatory restrictions on alcohol marketing, as recommended by the World Health Organization, to protect children and young people from alcohol marketing in Scotland.*”

The 2018 Alcohol Framework included the following “Action”:

“We will put the voices of children and young people at the heart of developing preventative measures on alcohol. This will involve encouraging and seeking the views of children and young people.”

These measures were due to commence in late 2018 and 2019 and they are centred on what the World Health Organisation calls the SAFER initiative⁶, launched in September 2018. The ultimate goal of this initiative is “*a world free from alcohol related harm*”. It includes the following specific objective:

“Enforce bans or comprehensive restrictions on alcohol advertising, sponsorship, and promotion.”

In September 2019, Alcohol Focus Scotland (“AFS”)⁷ then curated a report from the Children's Parliament entitled “Children's Parliament Investigates: an alcohol-free childhood – For Alcohol Focus Scotland”⁸.

The Children's Parliament ran sessions involving 84 children drawn from three Edinburgh schools to seek their views on alcohol, using materials provided by AFS to frame the context of the workshops. This 2019 paper is a clear proponent of the “lived experience” approach to policy, using a number of quotes from the children, of which the following is an example:

“No one asks us about alcohol and suddenly when you think about it, you realise it's all around you all the time”.

² <https://www.gov.scot/publications/new-leadership-fresh-start-scotland-first-ministers-speech-18-april-2023/>

³ <https://archive2021.parliament.scot/parliamentarybusiness/Bills/88187.aspx>

⁴ http://archive2021.parliament.scot/Audio_files/20160126-Scottish_Government_Response.pdf

⁵ <https://www.gov.scot/publications/alcohol-framework-2018-preventing-harm-next-steps-changing-relationship-alcohol/>

⁶ <https://www.who.int/initiatives/SAFER>

⁷ <https://www.alcohol-focus-scotland.org.uk>

⁸ <https://www.childrensparliament.org.uk/wp-content/uploads/Alcohol-free-Childhood-Online.pdf>



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The use of quotes obtained through these organised sessions clearly influences the current government consultation, which goes so far as to include some of them as a basis for policy. I discuss the weight given to anecdotal evidence such as “lived experience” quotes later in this paper.

This 2019 paper reaches a number of conclusions including the following:

- Remove adverts for alcohol so that children can’t see them
- Stop alcohol sponsorship of events at which children may be present
- Make alcohol less visible in shops
- Make alcohol less visible on TV such as blurring during times when children may be watching

The next and perhaps final crucial paper leading us up to the 2022/23 consultation is that produced by AFS in June 2022, entitled “Realising Our Rights” (“RoR”)⁹.

This is essentially a re-run of an earlier AFS paper, “Promoting Good Health from Childhood” (2017)¹⁰, albeit RoR moves away from the earlier sole focus on children to include people with an alcohol problem and take a new approach of “*framing the case for statutory regulation of alcohol marketing as a human rights issue*”. There is no doubt that RoR is a significant influence on the Scottish Government consultation.

⁹ <https://www.alcohol-focus-scotland.org.uk/media/440172/alcoholmarketingreport2806.pdf>

¹⁰ <https://www.alcohol-focus-scotland.org.uk/media/213609/Promoting-good-health-from-childhood-report.pdf>



Part Two: Analysis of Policy Proposals

The following is an analysis of resources which are quoted or referred to on the face of the consultation document or in other materials which the consultation is linked to in some way.

In this analysis I will refer to the consultation using its own paragraph headings and numbering, and then offer my own views. My approach is to quote the paragraphs or parts of paragraphs which are supported by some form of link to external sources or alleged evidential base, as it is this evidence, such as it may be, that I am tasked with analysing.

My assessment is then, by its nature, selective, as I am focusing on the paragraphs which appear to me to be within the scope of my brief, though the outcome will, I am hopeful, be considered by readers to be comprehensive.

I have, wherever possible, reviewed the full-text of academic studies and surveys. However, in a very small number of cases, I was unable to access the full-text, and was only able to review the “abstract”, which is the academic term used to describe what might be called an “executive summary” of the paper. I have made it clear where such occasions occurred.

There is a numbering error between the online version of the consultation, and the online print (PDF) version, owing to a missing Paragraph **3.12** in the online version. This means the numbering from **3.12** onwards is out of kilter when comparing the two versions. My numbering is based on the online version and so there is no **3.12**, and internal cross references in this document are numbered accordingly.

Lastly, a large number of the academic studies on these issues emanate from North America. There are a number of quotes in this report where North American spelling from those studies has been left as is.



1. “Why do we need to take action?”

Paragraph 1.2

“In 2021, 1,245 people in Scotland died from illnesses that can only be caused by drinking alcohol. That is an average of 24 people dying every week. Each one of these deaths is tragic and entirely preventable.”

Analysis of 1.2

These numbers are derived from the National Records of Scotland publication “Alcohol-specific deaths” (2 August 2022)¹¹. However, as presented in this statement, the nuance of what other factors may be involved is absent. In fact, the relevance of multiple forms of deprivation and how that impacts an individual’s drinking pattern is stark. There is no evidence presented that these societal factors are influenced by marketing or advertising of alcohol, but instead are, it seems to me, wider issues arising primarily from the effects of different types of poverty.

The breakdown in relation to deprivation from the NRS report is as follows¹²:

2021 Alcohol Related Deaths (no. of people)

Most deprived	450
	314
	225
	159
Least deprived	97

A key section of the August 2022 report referred to above is (Page 9):

“There has been a clear and consistent trend over time showing alcohol-specific deaths are more common in more deprived areas.”

What this demonstrates to me is that the Scottish Government ought to have paid more careful attention to the important correlation between alcohol harm and the forms of poverty and deprivation will lead people to harmful patterns of drinking, and to consider policy measures which may disrupt that correlation.

Paragraph 1.3

“In addition to deaths wholly caused by alcohol, some deaths are partly attributable to alcohol consumption. Analysis found that there were 3075 deaths attributable to alcohol consumption in 2015.”

Analysis of 1.3

This data is based on the Public Health Information for Scotland report: “Hospital admissions, deaths and overall burden of disease attributable to alcohol consumption in Scotland” (2018)¹³.

The data is from 2015. The wider studies referred to in other parts of the consultation indicate that there is a longer-term generally improving picture in relation to alcohol health harms, albeit there may be a Covid-19 impact in a slight upward trend in the last year which it is suggested may be as a result of a polarisation effect – where heavier drinkers drank more alcohol, and lighter drinkers drank less. No analysis is given of the wider trend in this context, which would have been helpful. It would be of

¹¹ <https://www.nrscotland.gov.uk/files/statistics/alcohol-deaths/2021/alcohol-specific-deaths-21-report.pdf>

¹² <https://www.nrscotland.gov.uk/statistics-and-data/statistics/statistics-by-theme/vital-events/deaths/alcohol-deaths>.

¹³ <https://www.scotpho.org.uk/media/1597/scotpho180201-bod-alcohol-scotland.pdf>



assistance to see, for example, how the “3075 deaths” compares with similar studies from 5, 10, and 20 years past, and it would be helpful to be able to consider data which is not of 8 years vintage.

The authors of the report themselves confirm that there is no evidential or demonstrable causal link. Note the following caveats:

“Quantifying the impact of alcohol consumption on health can be difficult due to limitations in the measures available.”

“The strength of evidence for a causal link between alcohol consumption and each of the conditions included in this study varied in terms of the strength and direction of the association, the consistency of the findings among studies and the specificity of the association”

The report has nothing to say about how, if at all, marketing or advertising of alcohol is associated with the deaths noted. This, of course, is a key observation.

As this is the first time this analysis has mentioned the causal link, I think it worth making some wider general points about this in relation to Scots law, before moving on.

There is no doubt that the necessity of a causal link is alive and well in relation to the regulation of alcohol in Scotland and, in particular, under the Licensing (Scotland) Act 2005. But the need for a causal link to demonstrate, for example, that availability of alcohol leads to alcohol consumption, or even thereafter to some harm, is not a 2005 Act invention – it is a part of the wider underlying jurisprudence of public administrative and licensing law – and has been for decades. There are numerous examples of a judicial requirement for causality throughout the licensing case law¹⁴. It should be noted that “availability” is not a legal ground of refusal of a licence. As a concept, it is an academic one, not a legal one¹⁵.

Taking a wider lens, Scots law of causation in evidence has relied upon the doctrine *sine qua non* for some time – what is referred to as the “but for” test – in order to prove factual causation. “But for” the action or inaction of one party, the impact on another would not have occurred¹⁶. The “but for” test is now taken alongside what is called a “material contribution” test, though this is a fallback position, as I understand it, and relates to where a material contribution can be relied upon in lieu of a clear “but for” scenario, in order to establish a delictual liability where there is a negligent cause which is more than negligible.

It should also be remembered that in this sphere (negligence), legal causation is not the same as factual causation, because legal causation is more about whether the person who factually causes some injury to another should in law be liable for it, which is an entirely different proposition. As to legal causation in this context, Lord Reid said¹⁷:

“But it has often been said that the legal concept of causation is not based on logic or philosophy. It is based on the practical way in which the ordinary man’s mind works in the every-day affairs of life.”

I provide this wider commentary in order to flesh out an important point: what academia may believe to be causation may not be what the law thinks it is, and may not be what different parts of the law think it is (for example, the law of delict and negligence is not the law of licensing, and the law of delict

¹⁴ See, *inter alia*, *Deejays Nightclub v Aberdeen Licensing Board* [2007] CSOH 188; *Elder v Ross and Cromarty Licensing Board* 1990 SLT 307; *Aitken v City of Glasgow District Council* 1998 SCLR 287; *Kaur v City of Glasgow Licensing Board* [2009] 44 SLLP 14; *Galloway v Western Isles Licensing Board* [2011] LR 814; *Martin McColl Ltd v Aberdeen City Licensing Board* (30 November 2016, unreported), *Maresq T/A La Belle Angele v Edinburgh Licensing Board* 2001 SC 126; *Aquilla Clark v North Ayrshire Licensing Board* (28 January 1998, unreported), and *Risky Business Ltd v City of Glasgow Licensing Board* 2000 SLT 923.

¹⁵ I discuss the academic concept of “availability” and how this sits within the 2005 Act, particularly in relation to overprovision, at *McGowan, S.* (2021) “*McGowan on Alcohol Licensing*”, Edinburgh University Press: Page 279-280.

¹⁶ See *McWilliams v Sir William Arrol* [1962] 1 WLR 295.

¹⁷ *McGhee v National Coal Board* [1972] 3 All ER 1008, 1 WLR 1.



is not human rights law), and factual causation is not to be confused with legal causation which as a concept is to do with the application of liability as opposed to an evidential causal link.

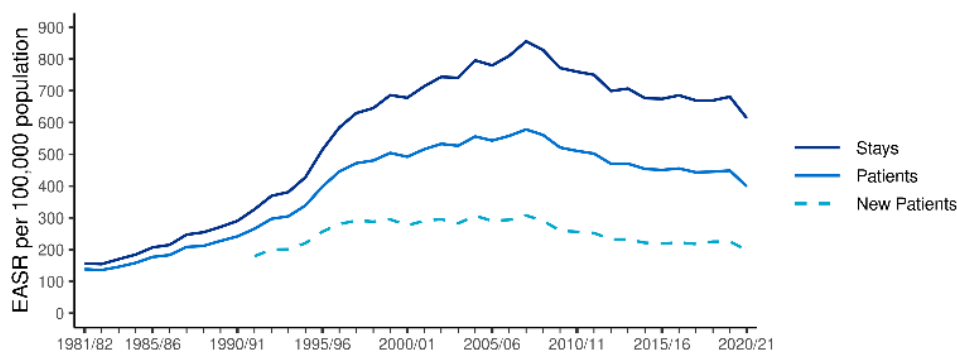
What is clear for our purposes, is that it is well understood by all actors that the creation of alcohol policy involving prohibition in any form must come from a place of justification; and that justification is the probative proof (a) that advertising and marketing of alcohol causes harmful consumption and (b) that the restriction or prohibition of that advertising and marketing of alcohol would reduce, stop or reverse that harmful consumption. The absence of a causal link therefore undermines the justification and necessity of the prohibition, and this is why it is so important in the wider analysis of whether it is lawful.

Paragraph 1.4

“In the 2020/21 financial year, there were 35,124 alcohol-related hospital admissions (stays) in general acute hospitals in Scotland. That is nearly 700 hospital admissions every week.”

Analysis of 1.4

This data is taken from Public Health Scotland Alcohol related hospital statistics 2020/2021¹⁸. A summary factsheet is also available¹⁹. Presenting a snapshot of the number of admissions in 2020/2021 does not allow the reader to understand the positive wider prevailing trend of a reduction in hospitalisation rates, which can be seen in the following graph, which is taken from the same report:



*Fig1 - Source: Public Health Scotland Alcohol related hospital statistics 2020/2021 (see FN 13)

What this shows is that there was a 10% drop in admissions from 2019/20 – and, importantly, that this is part of a wider positive downward trend, starting around 2007.

Paragraph 1.10

“Marketing is ‘the business activity that involves finding out what customers want, using that information to design products and services, and selling them effectively.’”

Analysis of 1.10

The wording the Scottish Government choose to refer to here is from RoR, which in turn is the definition offered by the Cambridge Dictionary (2022)²⁰. It may be asked why the Scottish Government is relying on definitions from a group campaigning for the restriction of alcohol as its key resource in understanding how marketing works, instead of using a wider lens and seeking the views of independent marketing experts who are not agenda-led.

¹⁸ <https://publichealthscotland.scot/publications/alcohol-related-hospital-statistics/alcohol-related-hospital-statistics-scotland-financial-year-2020-to-2021/>

¹⁹ <https://publichealthscotland.scot/media/11359/2022-02-01-arhs-summary.pdf>

²⁰ <https://www.alcohol-focus-scotland.org.uk/media/440172/alcoholmarketingreport2806.pdf>



Paragraph 1.11

“The consultation also includes consideration of Place, a product’s distribution strategy with a focus on ensuring it is easily accessible to potential buyers, in the section on placement of alcohol products in in retail outlets.”

Analysis of 1.11

The concept of “Place” is a wider marketing concept, but again the Scottish Government do not rely on their own assessment of what this might mean in socio-economic terms, but instead defer to how this concept is referenced within RoR. The concern, therefore, is that the AFS descriptors appear to have been adopted by the Scottish Government uncritically, and without input from alternative sources. In their consideration of “Place”, AFS argue (Page 22):

“In the UK, the number of places selling alcohol has increased considerably over the past few decades”.

The UK picture on number of licensed premises is of far lesser evidential value than the Scottish picture. The Scottish picture, once properly analysed, starkly rebuts the notion *“that the number of places selling alcohol has increased considerably”* and this is a good example of why the uncritical adoption of concepts put forward by agenda-led organisations is poor practice.

At the point of conversion from the previous licensing system under the Licensing (Scotland) Act 1976, there were 19,263 licensed premises. A large swathe of premises chose not to convert to the new system under the Licensing (Scotland) Act 2005, principally due to the cost and regulatory burden, and after the dust settled when the 2005 Act had commenced, the number of licences had dropped to 16,305.

The Scottish Government publishes an annual report on liquor licensing statistics. The following table is the actual position concerning numbers of licences, drawn from those statistics²¹:

Year	Off Sale	On/On and Off Sale*	Total
2021/22	5155	11,405	16,560
2020/21	5053	11,426	16,479
2019/20	5022	11,543	16,565
2018/19	5091	11,631	16,722
2017/18	5015	11,592	16,697
2016/17	5117	11,625	16,742
2015/16	5110	11,593	16,704
2014/15	5096	11,537	16,663
2013/14	5044	11,476	16,520
2012/13	4921	11,475	16,396
2011/12	4856	11,482	16,338
2010/11	N/A	N/A	16,305
2007 (Pre 2005 Act)	6232	13,031**	19,263

*This number includes premises with on-sales only, and premises which have both on sales and off sales.

Many pubs have both on sales and off sales, the off-sale element being ancillary or in many cases unused.

**This number includes all of the 1976 “on-licence” types (eg public house, restaurant) as well as members’ clubs.

When analysing the wider trend, you can see that the overall number of licensed premises in Scotland has dropped from 19,263 in in 2007 to 16,560 in 2021/22. Looking at a shorter period since the onset of the 2005 Act, the numbers of licences has remained broadly static, with a negligible net increase of 255 licences from 2010/11 to 2021/22. The true picture in Scotland is therefore the converse of that presented by AFS.

²¹ <https://www.gov.scot/publications/scottish-liquor-licensing-statistics/>



There was a modest net increase of 97 off-sale licences between 2020/21 and 2021/22²². I believe this can be explained by the uptick in such licences for small brewers and distillers during the Covid era, who had previously operated unlicensed (in the sense that they only sold to the trade and not to the public), but then required licences in order to facilitate online/remote orders direct to the public when the licensed trade was shut down²³.

Paragraph 1.13

“Marketing strategies do not rely on the reach and persuasion of one single activity but involve a range of activities interwoven to interact and complement each other, and maximise the likelihood of reaching and persuading consumers.”

Analysis of 1.13

See my comments re Paragraph 1.11.

Paragraph 1.18

“There is a connection between children and young people seeing alcohol marketing and drinking; seeing it leads young people to start drinking earlier, to drink more if they are already drinking, and to drink at heavy or problematic levels.”

Analysis of 1.18

This quote again simply links to RoR as opposed to any third party or independent resource. Unhelpfully, there is no direct reference to what aspect of RoR the Scottish Government is seeking to rely on, meaning the reader has to take a best guess as to what part of RoR (a 100-page document) is being referred to. A key claim from RoR which I believe links to the comment in **1.18** is as follows:

“Significantly, research published since the Network’s first report has now established a causal connection between children and young people’s exposure to alcohol marketing and drinking.”

I examine this bold claim in full, in my analysis under Paragraph **3.11** below.

Paragraph 1.20

“There is evidence that those who drink heavily have increased susceptibility to alcohol marketing and that this can translate into drinking behaviours. For those in recovery, alcohol marketing can be a trigger which threatens their recovery and can be responsible for relapse.”

Analysis of 1.20

The source for this statement is, again, RoR, although the precise data being relied on is not made clear as the link is simply to the report. When one analyses RoR to divine the inspiration for the statement, the first link given is to another AFS publication, “The effect of alcohol marketing on people with, or at risk of, an alcohol problem: a rapid literature review”, conducted by the University of Nottingham in March 2022²⁴. This paper says:

“the findings of the studies included in this review suggest that an effect of alcohol marketing in people with, or at risk of, an alcohol problem is likely...future research should include longitudinal and experimental studies to determine whether alcohol advertisement has a causal effect on alcohol use in people with or at risk of an alcohol problems”.

²² Ibid.

²³ Under s.1(2)(b) of the Licensing (Scotland) Act 2005 a licence is not required where the sale is “to trade”. It is only where a sale is made directly to the public that the licence requirement kicks in. Prior to Covid-19, many brewery and distillery businesses only sold “to trade” i.e. to shops or bars.

²⁴ <https://www.alcohol-focus-scotland.org.uk/media/440167/the-effect-of-alcohol-marketing-on-people-with-or-at-risk-of-an-alcohol-problem-a-rapid-literature-review.pdf>



The paper has a number of caveats, including:

“due to time resources we were unable to assess the methodological quality assessment of the included studies and therefore it is unclear how quality affects the findings of the review”, and, “to date the evidence base, as demonstrated by this review, is too small and thus currently precludes such a judgement.”

The following excerpt important in fleshing out the evidential value of all of this:

“Our review identified a limited number of studies assessing the effect of alcohol marketing in people with, or at risk of, an alcohol problem. The effect of alcohol advertising on alcohol use was only assessed in one small experimental study of young adult heavy drinkers, which found no apparent effect. Studies looking at other outcomes suggested that a significant proportion of people with or at risk of alcohol problems notice alcohol advertisements and can find them appealing, and that advertisements may have an effect on positive alcohol-related emotions and cognitions. Among people in recovery from an alcohol use disorder, the findings suggested that there could be an effect on craving, and that alcohol marketing may be perceived to trigger a desire to drink. Overall, the findings from the included studies point to a likely effect of alcohol marketing in these populations, although the evidence is currently very limited and comes from a highly heterogeneous group of studies.”

So, the case for causality is again not made out, and much of this is educated supposition. In the consideration of evidence of alcohol harms, decisions by licensing boards with regard to the licensing objective of Protecting and Improving Health²⁵ are often considered with regard to the test of possibility vs probability. Mere possibility is not a sufficient evidential basis to find detriment and is not a sufficient basis on which to refuse a licence. The dichotomy of academic evidence and informed speculation, versus real world facts and probative material evidence, is a key element in understanding the evidential value, and therefore a robust basis for policy, of this sort of evidence²⁶ (on which, see my conclusions at the end of this paper).

In **Martin McColl Ltd v Aberdeen City Licensing Board**²⁷, a refusal of a licence was overturned on appeal. The sheriff had this to say:

“It is very clear that [the Board] require, when applying such factors as are relevant, to come to a view that these would be inconsistent with one or more of the licensing objectives (Section 23(5(c)) and in that event that the board must refuse the application. That is, however, a completely different test from a set of circumstances which may be so inconsistent. This is the difference between possibility and probability. The defenders have adopted a substantially lower test than required.”

Possibility, such as “could be”, “may have” and “may be perceived to be”, is certainly not a causal link, but beyond that, it is also too low an evidential value to meet even the test of mere *inconsistency* with the licensing objective of Protecting and Improving Public Health under the 2005 Act.

The concern with this, of course, is that a reader of the plain text of the Scottish Government consultation might believe that the studies referred to infer that the propositions being put forward are irrefutable fact. Properly understood, however, the evidential base for statements, such as those given or linked to at **1.20** is weak, and in my view is insufficient evidence in law in relation to the health objective under the 2005 Act.

Paragraph 1.21

²⁵ <https://www.legislation.gov.uk/asp/2005/16/section/4>.

²⁶ See, *inter alia*, Ask Entertainment Pub Ltd v Aberdeen City Licensing Board 2013 SLT (Sh Ct) 94; Melville v City of Glasgow Licensing Board [2012] LR 90; Brewdog Bars Ltd v Leeds City Council (6 September 2012, unreported); JAE (Glasgow) Ltd v City of Glasgow District Licensing Board 1994 SCLR 333.

²⁷ 30 November 2016 (unreported).



“Studies indicate that the way alcohol is portrayed within alcohol adverts acts as a cue for drinking and influences consumption.”

Analysis of 1.21

This statement once again takes us not to any third-party evidentiary assessment, but the RoR report. I have dealt above with the wider claims around the link between advertising and consumption, but it is disappointing to note, in the context of this paragraph, the absent recognition of the existing measures in place through ASA, Portman Group and others, which specifically deal with rules around the “attractiveness” of the product in the context of how it can be advertised.

The power of advertising to influence people to consume alcohol, or to consume it harmfully, also has to be taken in the wider context that demand and opportunity for alcohol is influenced and restricted by a multitude of other factors including the multifarious restrictions and laws already in place such as age restrictions, existing display restrictions, social factors, wider economic and social trends, and habit formation²⁸. I can see no effort to compute how these factors (which serve the purpose of inhibiting sale and consumption) have been taken into account against the speculation that alcohol advertising leads to purchase, or consumption, or to harm.

²⁸ Collis et al, (2010) “Econometric Analysis of Alcohol Consumption in the UK”, HMRC.



2. “How is alcohol harmful to children and young people?”

Paragraph 2.10

“Evidence indicates that drinking behaviours adopted in the formative teenage years track strongly into adult life.”

Analysis of 2.10

The evidence offered to support this statement is another example of an academic study where the authors do not hold themselves out to be inferring a causal link. The study, McCambridge et al (2011)²⁹, actually says the following:

“Although a number of studies suggest links to adult physical and mental health and social consequences, existing evidence is of insufficient quality to warrant causal inferences at this stage.”

²⁹ McCambridge J, McAlaney J, Rowe R (2011) Adult Consequences of Late Adolescent Alcohol Consumption: A Systematic Review of Cohort Studies. PLoS Med 8(2).



3. “Rationale for intervention – how will restricting alcohol marketing prevent and reduce alcohol-related harms?”

Paragraph 3.2

“A survey of over 3,000 young people aged 11-19 years old in the UK found that half of the sample recalled seeing 32 instances of alcohol marketing in the last month, effectively one piece of alcohol marketing every day. Within the under 18 demographic, one third of those sampled recalled 54 or more instances of alcohol marketing – almost twice a day. This is simply far too high.”

Analysis of 3.2

Too high by what standard? Policy based on unknowable standards does not make for good law. Awareness that alcohol exists and awareness that alcoholic brands exist is not the same thing as consuming alcohol, or consuming it in harmful way. I am aware that steel manufacturers exist, and I see their adverts. I do not buy steel. Awareness does not equate to consumption.

The evidential basis referred to here (“the survey”) is Critchlow et al (2019)³⁰. The authors do not themselves argue that awareness of alcohol means it is consumed or that harms arise. Instead, their conclusions merely identify that young people have awareness of alcohol marketing, which is not the same thing:

“Young people, above and below the legal purchasing age, are aware of a range of alcohol marketing and almost one in five own alcohol branded merchandise.”

They are very clear that:

“The cross-sectional nature of the survey does not enable causal relationships to be drawn about the link between alcohol marketing and either consumption or susceptibility.”

It appears questionable, therefore, to rely on this study as evidence that awareness of alcohol is inherently harmful (“too high”), unless you oppose awareness of alcohol and alcoholic brands *per se*.

Conspicuous by its absence in this “rationale for intervention” is any analysis of the statistical evidence of actual consumption of alcohol or actual harm from alcohol to children and young people, and to consider what the prevailing trends look like absent such significant prohibitions.

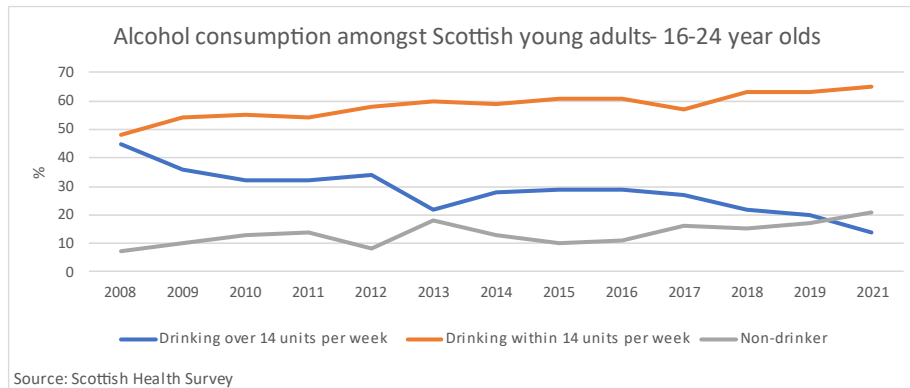
The Scottish Health Surveys (see earlier links) confirm that there has been a continued fall in weekly drinking amongst the 13- to 15-year-old cohort since at least 2004, and as of the 2021 figures, this has dropped to 7%, an overall fall of approximately 58% across that period. There has also been a 34% fall in alcohol related stays for 15-19 year-olds from 2008/09 to 2018/2019³¹. This is reflective of an overall falling trend in the wider population since a high in 2008³².

To illustrate this further, it is worth examining the Scottish Government’s own data in a bit more detail to better understand why I believe there should be legitimate concerns over the absence of this evidence in the context of these proposals. Firstly, let us look at overall consumption data, which is as follows:

³⁰ Critchlow N, MacKintosh AM, Thomas C, et al Awareness of alcohol marketing, ownership of alcohol branded merchandise, and the association with alcohol consumption, higher-risk drinking, and drinking susceptibility in adolescents and young adults: a cross-sectional survey in the UKBMJ Open 2019).

³¹ <https://www.isdscotland.org/Health-Topics/Drugs-and-Alcohol-Misuse/Publications/2019-11-19/2019-11-19-ARHS-Report.pdf>

³² See Fig1, in analysis of Paragraph 1.4.



*Fig 2 - Source: Scottish Health Survey 2022

The prevailing trends this data represents appears to me to be at odds with a requirement for additional or increased intervention by prohibition of advertising. Without such prohibitions, the data shows that the population of non-drinkers has increased, from 7% in 2008 to 21% at 2021. Meanwhile those drinking above the 14 units per week guideline has fallen from 45% to 14%, and those drinking below the 14-unit marker has increased from 48% to 65% over the same period.

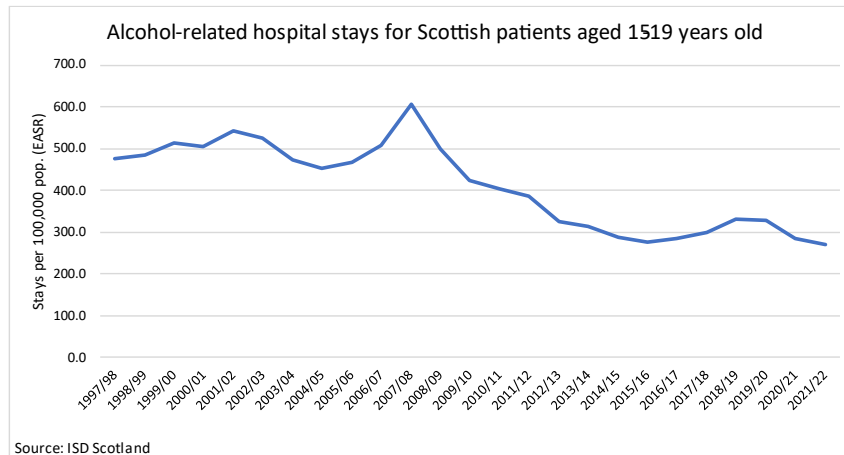
Turning to the information the Scottish Government has on under-age drinking, we have data going back to 1990. These numbers are as follows:



*Fig 3 - Source: Health and Wellbeing Census Scotland 2021/22 for data 2016 to 2021; and Scottish Schools Adolescent Lifestyle and Substance Use Survey (SALSUS) for data from 1990 to 2015

This data confirms there is a long-term prevailing downward trend of reduction in consumption over the last two decades. In 1990, the number who had drank in the past week was at 18.75%. Whilst this rose to highs in 1996 of around 33.25% and in 2002 of around 34.75%, it has then declined significantly and is now the lowest it has been since the data was collected. As of 2021, the number had fallen to 7.4%.

Lastly, if we look at the available date on alcohol-related hospital admissions (all alcohol conditions) we see a further demonstration of a prevailing downward trend:



Source: ISD Scotland

*Fig 4 - Source: ISD Scotland³³

In 1997/98 the number of stays per 100k of population was 475.3. This reached an all time high of 606.4 in 2007/08 but since that time has declined steadily, to a record low of 270.9 in 2021/22. Taking these three graphs together there are, for me, serious gaps in understanding the “rationale for intervention”. Where is the societal crisis which would justify the sweeping prohibitions proposed? And why is any analysis of these figures absent from the consultation document?

Paragraph 3.3

“Exposure is cumulative.”

Analysis of 3.3

The language of “exposure”, used here and elsewhere, appears to me to create a negative inference. “Exposure” is used in the sense that alcohol advertising is being “inflicted” and is harmful. The use of language of this nature in the Scottish Government document is concerning because it is suggestive of a bias towards the precept that alcohol, and the advertising of it, is always inherently harmful. In addition, the “cumulative” impact of advertising is discussed in a vacuum, with no regard to the existing rules around the advertising of alcohol and how those rules are designed to prevent attractiveness to children or promote responsible consumption.

Paragraph 3.4 and 3.5

“It is likely that seeing alcohol marketing increases knowledge and awareness of alcohol brands over time”

“Studies in the UK have shown that children as young as ten can readily identify alcohol brands”

Analysis of 3.4 and 3.5

The mere fact that children and young persons can recognise brands is not because those brands are alcohol brands. Children and young people recognise brands of a variety of consumer goods. They recognise a great many things. The inference here is that children and young people should be entirely “protected” from alcohol brands. But there is no discussion around positive attribution and impact of knowledge of alcohol brands being brands which *are for adults* and how such knowledge can reinforce that understanding.

The consultation document does not link to any new external source in these Paragraphs, instead referring back to RoR as justification.

³³ <https://www.isdscotland.org/>



The reference to “*children as young as ten*” in 3.5 appears to me to be a reference to the part of RoR which says:

“A previous survey found that children as young as 10 could readily identify alcohol brands and associated visual cues such as logos, and characters from alcohol advertising on TV.”

The evidence for that claim is, in turn, another paper by AFS and other campaign groups from 2015 called “Children’s Recognition of Alcohol Branding”. This is not an academic paper as such but a summary “factsheet”³⁴ based on a marketing company who conducted a survey. It does not provide any details around calculations of Relative Risk or Odds Ratios, or potential confounders or biases (see 3.11 below for an exploration of these academic terms) to assess, so it is difficult to comment on the outcomes further.

Paragraph 3.7

“Children and young people can link alcohol brands to particular drinking occasions and settings, in line with the marketing strategies of these brands.”

Analysis of 3.7

This comment refers to Morey et al (2017)³⁵. This study looked at views of a series of focus groups on how a number of matters might influence young people’s drinking behaviours including appeal, recognition, taste, packaging, strength, reputation, price and a host of other potential influences. Possibly the weakest of all of these influences was in fact the advertising of alcohol brands. The study says:

“There was relatively little mention of advertising as important to shaping a products appeal.”

The study also acknowledges that:

“...to date there is no research that we are aware of in the UK that has examined the differential effects of alcohol brands on teenagers.”

There is no causal link here. The prevailing trend in “adolescent” consumption has been in decline for some time and the alleged susceptibility of younger people to alcohol advertising does not appear to cut across that wider, longer-term trend³⁶. Vashishtha et al (2019)³⁷, which examined various reasons for this trend, suggests that the strongest factor was a shift in parental practices, indicating in my reading of matters that the downward trend in consumption is actually a much longer term, deeper cultural shift in lowering consumption.

Paragraph 3.11

“Researchers recently concluded that a causal link might exist between exposure to alcohol marketing and consumption amongst young people, using the Bradford Hill criteria (a set of criteria academics use to assess the strength of causality)”

Analysis of 3.11

³⁴ https://www.drugsandalcohol.ie/23385/1/Childrens-recognition-of-alcohol-marketing_briefing.pdf

³⁵ Yvette Morey, Douglas Eadie, Richard Purves, Lucie Hooper, Gillian Rosenberg, Stella Warren, Henry Hillman, Jyotsna Vohra, Gerard Hastings and Alan Tapp (2017) Youth engagement with alcohol brands in the UK. Cancer Research UK.) Here: <https://www.alcohol-focus-scotland.org.uk/media/277817/Youth-engagement-with-alcohol-brands-UK.pdf>.

³⁶ de Looze et al (2015) (De Looze M., Raaijmakers Q., ter Bogt T., Bendtsen P., Farhat T., Ferreira M., Pickett W. Decreases in adolescent weekly alcohol use in Europe and North America: Evidence from 28 countries from 2002 to 2010. European Journal of Public Health. 2015;25(Supplement 2):69–72.

³⁷ Vashishtha R., Livingston M., Pennay A., Dietze P., MacLean S., Holmes J., Lubman D. I. Why is adolescent drinking declining? A systematic review and narrative synthesis. Addiction Research & Theory. 2019.



Of all the assertions within the Scottish Government consultation (and RoR), this is perhaps the one which requires the most significant focus. This statement is based on Sargent & Babor (2020)³⁸.

Demonstrating a true causal link as a matter of evidential, material fact, as has been suggested, is a very bold claim to make and this requires some unpicking. The Sargent & Babor study uses a series of tests known as the “Bradford Hill Causality Criteria”. Sir Austin Bradford Hill is, as I understand it, considered by most to be one of the most important scientific voices in the debate over what constitutes causality and his seminal work from 1965³⁹ remains the benchmark.

Although there is no analysis offered of limitations in the study either in RoR, or by the Scottish Government, the authors do say at the outset:

“Causality is not a conclusion that derives from any one scientific study: It is a judgment call”.

I will come back to this statement later. The claim by Sargent & Babor is that causality has been established by reference to the Bradford Hill criteria. The Bradford Hill criteria to prove causality are as follows:

Strength of Association; Dose Response; Temporal Association; Consistency; Specificity; Plausibility; Experimental Evidence; Coherence; and lastly, Analogy.

We will look at each of these in turn. This is perhaps the most detailed element of my analysis, but it is also the most important, because it cuts straight to the key question of whether a causal link is established.

- **Strength of Association:** There are two ways the academics measure strength of association and I will endeavour to summarise these. The first is Relative Risk (“RR”), and the second is the Odds Ratio (“OR”). Both are different ways to try to get to the same outcome – what is the likelihood or strength of association? These terminologies can sometimes be difficult for the lay person to unpick. RR is the probability of risk of something occurring. OR is the odds of something occurring. These are not the same thing.

Whilst the RR is the ratio of two probabilities, the OR is a ratio of two odds which means the number of events vs non-events. These two different ways of measuring strength of association can be confusing and sometimes the terminology is interchangeable. The OR is not the same as RR and if my understanding of the literature is correct, tends to be bigger than the RR for ORs above 1.0, meaning an exaggerated position can sometimes result⁴⁰. Researchers creating statistical modelling may also to endeavour to adjust the OR to take into account potential confounders (phenomena which may impact on the outcome) and this is called an Adjusted Odds Ratio (“AOR”). An AOR should be more robust (and therefore more reliable) than an OR having taken confounders into account.

So, whilst a RR of, say, 2.0, means the risk or probability of something is twice as likely (in our case, let us say this is consumption of alcohol following exposure to alcohol advertising), an OR of 2.0 means there is a doubling of the odds that the outcome will occur as opposed to not occurring, which is not the same as probability. An OR of 1.0 or near 1.0 means there is no association. In turn, an OR of less than 1.0 means the relationship is inverse.

I should also note here that, in relation to ORs, the literature refers to a concept called “confidence intervals”. The accepted minimum appears to be 95%, which as I understand it, in simple terms is a way of saying that the researcher is 95% confident that the outcome they observed is the true outcome. Important for my purposes is that where a confidence interval includes the number 1 within the range, it seems to be accepted within the literature that the

³⁸ Sargent, J. D. & Babor, T. F “The relationship between exposure to alcohol marketing and underage drinking is causal.” Journal of Studies on Alcohol and Drugs, Supplement, (s19), 113-124.

³⁹ Hill A. B. The environment and disease: Association or causation? Proceedings of the Royal Society of Medicine. 1965;58:295–300.

⁴⁰ Davies HT, Crombie IK, Tavakoli M. When can odds ratios mislead? BMJ. 1998 Mar 28;316(7136):989-91. See also Cummings P. The Relative Merits of Risk Ratios and Odds Ratios. Arch Pediatr Adolesc Med. 2009;163(5):438–445.



results are *not statistically significant* because the true outcome may be at, or above, or below 1.0, which means there is no association at all or no clear association. Thus, confidence intervals which include the number 1.0 are of weak or no use in evidencing any association.

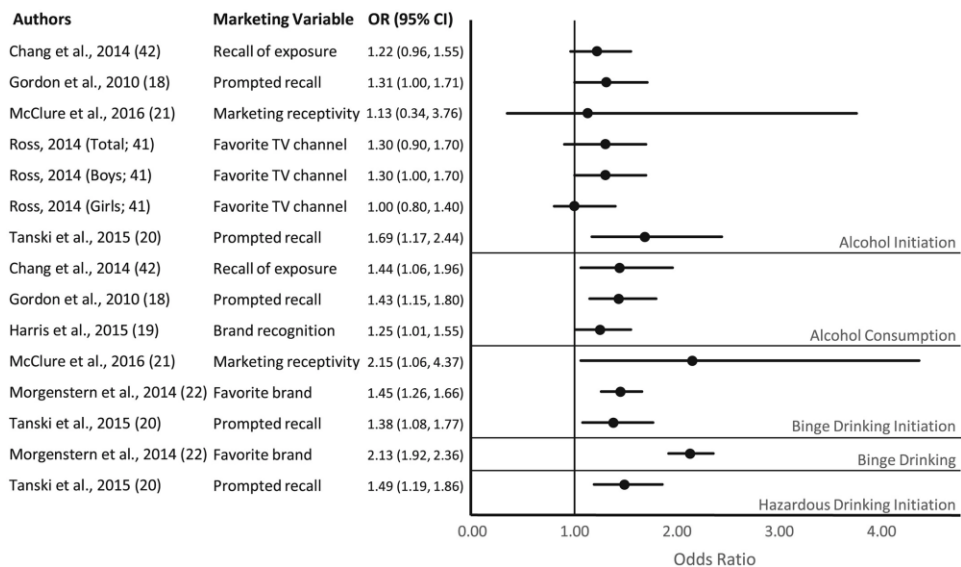
Sargent & Babor say a RR of 2.0 or below is “modest”. To give a comparator, the RR of smoking to lung cancer they say is above 10.0, which of course was the field in which Bradford Hill was interested. In relation to OR, they lean on the work of Jacob Cohen who said the effect size expressed as an OR was as follows: .2 – modest; .5 moderate, and .8 and above strong.

What these measurements show, ultimately, is the strength of *correlation* only. Neither RR or OR is a conclusive indicator of causation.

The basis on which Sargent & Babor assert that there is a “strength of association” between children seeing alcohol marketing, and that marketing influencing them to drink, is by reference to a separate study, Jernigan et al (2017)⁴¹, which itself is an analysis of 12 other studies. Sargent & Babor describe the Jernigan study as “*evidence of a modest effect of alcohol marketing*”. But on a close read, the picture is in fact a mixed one. Whilst the Jernigan study does, no doubt, identify other studies which are suggestive of an association, there are also studies identified within Jernigan’s review where no association was found, such as in the following example:

“A 2-year study of more than 550 Scottish children aged approximately 13 years found at follow-up that awareness of advertising was not significantly predictive of subsequent drinking.”

The following table, from Jernigan, shows the OR for each of the 12 studies they looked at:



Thinking back to the caveats around the use of ORs I note above, you will see that 6 of these studies have a confidence interval which includes 1.0. This means the outcomes are not statistically significant and in 3 of these the relationship might even be inverse. An additional 4 have a confidence interval only marginally above 1.0 (Chang 1.06, Harris 1.01, McClure 1.06, Tanski 1.08). In short, some of these studies have much weaker outcomes, as regards strength of association (if any) between advertising and drinking patterns, than others. This can hardly be described as a redoubtable case for a causal link.

⁴¹ “Alcohol marketing and youth alcohol consumption: A systematic review of longitudinal studies published since 2008”. *Addiction*. 2017;112(Supplement 1):7–20.



- **Dose Response:** this criterion asks the question – does higher exposure⁴² to alcohol marketing mean “higher risk of consumption”? Does the exposure precede the consumption? In the authors words, the Bradford Hill criteria “*places a premium on longitudinal research in which marketing exposures are measured before the onset of alcohol use.*” A “longitudinal” study is one which examines different points across a period of time to understand what impact and effect the issue being tested may have had. This is in contrast to a “cross-sectional” study, which is a “single point in time” study. There seems no doubt that a longitudinal study is a more reliable than a cross-sectional study given the latter is more of a “snapshot”. But that being said, the three separate longitudinal studies relied upon are all described as having “mixed results” – one if these is Jernigan, and the other two are Smith and Foxcroft (2009) and Noel (2020) which are examined below.
- **Temporal Association:** this criterion asks the question – did exposure to alcohol marketing precede early onset of drinking? This seems to me to be a very important aspect of all this. Reverse causation is clearly a difficulty in the world of academic research into advertising and it does appear to me that someone is more likely to respond to, or remember, an advert for a product they already have an interest in⁴³. The Sargent & Babor study refers to two other studies to try to bear out this test. Firstly, there is Smith and Foxcroft (2009)⁴⁴. The conclusion of this 2009 study is that:

“...data from prospective cohort studies suggest there is an association between exposure to alcohol advertising or promotional activity and subsequent alcohol consumption in young people”.

A suggested association is not a causal link. Smith and Foxcroft themselves say their review (of a yet further 7 studies):

“...shows some evidence for an association between prior alcohol advertising and marketing exposure and subsequent alcohol drinking behaviour in young people”.

The authors also make clear there are “several limitations” including systemic bias and confounders, where some other external factor, other than marketing, may have influenced someone to drink. They say:

“...unmeasured or unknown confounders cannot be adjusted for and it is not possible to know if residual confounding influenced the analysis”.

Examples of confounders include family history, peer pressure, and even individual personality. In addition to these examples, the authors also describe attrition bias (i.e. participants falling away and no longer engaging in the research) as a “serious threat” to the validity of their study. Smith and Foxcroft sum up by saying:

“Does this systematic review provide evidence that limiting alcohol advertising will have an impact on alcohol consumption amongst young people? Not directly”.

It seems to me that an evidential analysis which purports to rely on merely the *existence* of a study which looks at the relationship between alcohol advertising and alcohol consumption is not the same as relying on the *findings* of that study. Certainly, this 2009 study is not evidence of a dependable causal link and does not hold itself out to be as such.

Lastly, on the point of preceding factors generally, I am reminded of the *post hoc ergo propter hoc* fallacy which is oft-interred in Scots law.

⁴² The use of the word “dose” here is, I think, representative of the fact that these terminologies and criteria principally arise from medical/clinical discourse and have been adapted to more sociological research.

⁴³ The issue of reverse causation and alcohol advertising is explored further in Martin & Mail (1995) “The Effects of Mass Media on the Use and Abuse of Alcohol”, DIANE Publishing: Page 63.

⁴⁴ Smith L. A., Foxcroft D. R. The effect of alcohol advertising, marketing and portrayal on drinking behaviour in young people: Systematic review of prospective cohort studies. BMC Public Health. 2009;9(51).



Consistency: the only effort by Sargent & Babor to satisfy this criterion is by relying on the preceding other studies, which it is argued of themselves mean the hurdle is overcome. Yet, the existence of other studies is not of itself consistency, especially as they are amongst each other and within themselves inconsistent, as demonstrated above – a point which the authors themselves concede on multiple occasions when they discuss “mixed results”.

They then say that a further study, Jackson & Barlow (2020)⁴⁵, “lends credence to the argument that marketing exposure is a causal factor in drinking behavior” and it makes “a strong case for independence of association” (i.e. the association of marketing and consumption). However, Jackson & Barlow themselves say the following:

“The purpose of this article is not to make the case for a causal connection between marketing and media exposure and youth drinking”.

In their conclusion, they say:

“it was not the intention of this article to provide any kind of definitive resolution to the question of whether alcohol advertising and marketing cause underage drinking. Because our article is theory driven rather than a formal systematic review of the literature reporting associations among psychological risk factors, alcohol marketing exposure, and youth drinking, this report is somewhat limited in scope.”

It appears to me that AFS, in the RoR paper, and in turn the Scottish Government’s consultation, ignore these significant caveats by Jackson & Barlow, and even invert them. Jackson & Barlow do lay down a prescient gauntlet, in their conclusion, saying:

“A statement of causality could be the basis for a more muscular approach to government oversight.”

But the statement which has been delivered by Sargent & Babor in the very title of their report (“*The relationship between exposure to alcohol marketing and underage drinking is causal*”) is not based on any new evidence, study or research whatsoever, but rather relies on the existence of previously known studies, none of which hold themselves out as having established causality and the concomitance of which is inconsistency.

It might be argued that, reliance on the mere presence of studies as the basis for a causal link, rather than accepting the mixed results and weak associations those studies uncover, is because the causal link is a figment, or like the fruits of Tantalus, forever out of reach. Sargent and Babor say:

“The fact that modest associations are found across multiple studies, each of which adjusts for a somewhat different set of covariates, is a very strong indicator of the robustness and consistency of the association”.

Multiple studies demonstrating modest or mixed associations do not amount to a causal link: they confirm that the association (between alcohol marketing and consumption) discovered on some occasions is at best a modest one, and yet on other occasions, conflicting studies and elements within those studies find no association at all.

- **Specificity:** with this criterion, Sargent & Babor ask themselves the question – is exposure to other marketing inputs (eg food) associated with higher risk of drinking? The task they set themselves here appears to be to show that alcohol marketing is associated with increased drinking regardless of whether individuals are receptive generally to other products. They rely on two further studies in this regard.

⁴⁵ Jackson K. M., Bartholow B. D. Psychological processes underlying effects of alcohol marketing on youth drinking. Journal of Studies on Alcohol and Drugs. 2020;(Supplement 19):81–96).



Firstly, they say Morgenstern et al (2011)⁴⁶ “showed that alcohol marketing receptivity was associated with drinking independent of receptivity to marketing for other products (e.g., candy and mobile phones)”. The Morgenstern study concludes that a group of German youths demonstrated a positive association between exposure to alcohol advertising and “youth drinking outcomes”, in comparison to non-alcohol advertising.

This study essentially says that advertising of non-alcoholic products appears to have less influence on later consumption patterns when compared to the advertising of alcohol. The ORs reported are notable, with 2.4 for “trying drinking”, 2.7 for “current drinking” and 2.3 for binge drinking, although the “generalizability” of these outcomes is questioned by the authors themselves, both because of the issue of loss to follow-up, where participants do not complete the second phase, and also in this case because the interval between assessments was extremely short, at only nine months. Of the 2130 who did not drink at baseline, 28% (581) of these started to drink in the interval period and so these assessments are focused on how advertising may have impacted that 28%. What then, of the 72% (1486) who were exposed to same advertising, and did not begin drinking?

They then rely on a further study, Tanski et al (2015)⁴⁷, which examines exposure to TV advertising of alcohol and links to underage drinking behaviours in a group of US “youths” aged 15 to 23 years. Tanski also suffers from loss at follow-up, to a much higher degree than Morgenstern (Tanski: 37% vs Morgenstern: 11%), which potentially introduces bias to the analysis. In the Tanski conclusion, they say:

“Our study found that familiarity with and response to images of television alcohol marketing was associated with the subsequent onset of drinking across a range of outcomes of varying severity among adolescents and young adults, adding to studies suggesting that alcohol advertising is one cause of youth drinking. Current self-regulatory standards for televised alcohol advertising appear to inadequately protect underage youth from exposure to televised alcohol advertising and its probable effect on behavior.”

One of the difficulties in placing any weight on this in the context of the Scottish Government consultation, is that it relates to advertising restrictions in the US in 2015, not Scottish (or UK) restrictions in 2023. ASA rules around TV adverts for alcohol specifically prevent adverts which make alcohol attractive to children and indeed watershed rules are in operation.

A further concern, which is conceded by Sargent & Babor, to the reliability of all these types of studies, (including Tanski) is the problem of “endogeneity”, which is a form of reverse causation or correlation – that the consumption of alcohol leads to a heightened awareness of advertising of the product.

- **Plausibility:** as I read it, this Bradford Hill criterion was about a likely, mature understanding of a biological mechanism which would explain the outcome. In his case, this was the link between smoking and lung cancer. The Sargent & Babor adoption of this to alcohol advertising is two-fold: to seek to understand whether there is a psychological plausibility that marketing influences alcohol consumption; and also whether there is a biological plausibility in relation to brain activity. The authors make reference to a clutch of other studies, but in doing so themselves confirm that none of these studies actually prove a causal link and even go so far to say some evidence is circumstantial. Consider the following excerpt from Sargent & Babor:

“Despite the inability of cross-sectional studies to prove causality, Finan et al. (2020) note the importance of this research for theory development, which is amply

⁴⁶ Morgenstern M., Isensee B., Sargent J. D., Hanewinkel R. Exposure to alcohol advertising and teen drinking. Preventive Medicine. 2011;52:146–151.

⁴⁷ (Tanski S. E., McClure A. C., Li Z., Jackson K., Morgenstern M., Li Z., Sargent J. D. Cued recall of alcohol advertising on television and underage drinking behavior. JAMA Pediatrics. 2015;169:264–271.



illustrated in several of the other supplement reviews in terms of plausible explanatory models that are supported by substantial research. Perhaps the greatest evidence for plausibility, which is circumstantial rather than scientific in nature, is the information presented by Jernigan and Ross (2020)."

The studies referred to also appear to ignore conflicting academic evidence which indicates that advertising has no impact on increasing spend or consumption, but rather impact the metric of brand share. A large criticism of the Scottish Government consultation is that it is entirely one-sided, providing a single perspective, namely that of harm. This narrow view might be attributed to the fact that the consultation appears to be extremely reliant on the work of AFS and Scottish Health Action on Alcohol Problems, both of which are campaign groups who agitate for increased regulation and prohibition of alcohol.

Importantly, none of the counterpoint views regarding the efficacy of a causal link between advertising and consumption, and indeed harm, are present within RoR or other AFS literature, and none of these divergent views are present within the Scottish Government consultation. This is a matter of some frustration, given there is a rich body of studies which offer the contrary view; i.e. that advertising of alcohol has no impact on consumption or harm.

- In Wilcox et al (2015)⁴⁸, the authors show that following an analysis from 1971 to 2012 in the US, per capita alcohol consumption had not changed much throughout this period, though alcohol advertising media expenditures for all alcohol beverages had increased almost 400% since 1971:

"that there is either no relationship or a weak one between advertising and aggregate category sales. Therefore, advertising restrictions or bans with the purpose of reducing consumption may not have the desired effect".

- In Eagle et al (2008)⁴⁹ the authors say:

"Policy solutions such as advertising bans or taxes that have been proposed in several countries seem to be based on insufficient evidence—i.e., there is no empirical evidence to substantiate the claimed causal effect between marketing communication practices directed at children and nutrition."

- In Nelson et al (2015)⁵⁰, the authors studied broadcast advertising of alcohol in 17 OECD countries between 1977 and 1995 and said:

"The results indicate that advertising bans in OECD countries have not decreased alcohol consumption or alcohol abuse."

- In Ambler (1996)⁵¹, the author concludes that there is little support for the so-called "strong" theory that advertising of alcohol increases consumption and therefore misuse, or the so-called "weak" theory that if alcohol advertising were removed it would reduce alcohol misuse.

Going further, it appears to me that there is a significant body of studies in academic literature which confirm that the function of advertising of alcohol is about share of market, and does not drive additional sales or consumption.

- Gius, M (1996)⁵² found that:

⁴⁸ Gary B. Wilcox, Eun Yeon Kang & Lindsay A. Chilek (2015) Beer, wine, or spirits? Advertising's impact on four decades of category sales, International Journal of Advertising, 34:4, 641-657.

⁴⁹ Lynne Eagle PhD, Sandy Bulmer, Anne de Bruin PhD & Philip J. Kitchen PhD (2005) Advertising and Children, Journal of Promotion Management, 11:2-3, 175-194.

⁵⁰ Jon P. Nelson & Douglas J. Young (2001) Do advertising bans work? An international comparison, International Journal of Advertising, 20:3, 273-296.

⁵¹ Tim Ambler (1996) Can Alcohol Misuse be Reduced by Banning Advertising?, International Journal of Advertising, 15:2, 167-174.

⁵² Using panel data to determine the effect of advertising on brand-level distilled spirits sales - Journal of Studies on Alcohol 57 (1), 73-76.



“...brand-level spirits advertising results only in brand switching and does not increase the overall size of the market.”

- In Siegel et al (2016)⁵³, the authors say:

“Marketing is increasingly recognized as a potentially important contributor to youth drinking, yet few studies have examined the relationship between advertising exposure and alcohol consumption among underage youth at the brand level.... These findings suggest that alcohol advertising influences an important aspect of drinking behavior – brand choice – among youth who consume alcohol.”

- Nelson (2001)⁵⁴ states the following:

“This chapter surveys the literatures on advertising bans and alcohol consumption or abuse, and advertising expenditures and alcohol consumption. The chapter concludes that advertising bans do not reduce alcohol consumption or abuse; advertising expenditures do not have a marketwide expansion effect; and survey-research studies of youth behaviors are seriously incomplete as a basis for public policy.”

- Lee and Tremblay (1992)⁵⁵ found that an analysis of the beer market in the US was influenced by price, but not by advertising.

- In Duffy (2001)⁵⁶ a conclusion is reached that a 100% increase in alcohol advertising would result in a 1% increase in total consumption.

- Molloy (2015)⁵⁷ states:

“...estimates with models including more rigorous controls for targeting indicate no significant effect of advertising on youth drinking.”

- Siegfried et al (2014)⁵⁸, which is a Cochrane Review⁵⁹ and therefore of a higher standard of evidence compared to many other studies, says:

“There is a lack of robust evidence for or against recommending the implementation of alcohol advertising restrictions.”

Bringing all of this back to real-world data in the current Scottish context, a key analysis of the alleged relationship between advertising and consumption comes in the form of the CREDOS Report (2022)⁶⁰. This report examined 20 years' worth of alcohol consumption and measured this against advertising spend by alcohol companies in Scotland. It found that:

“The analysis detailed in this report finds little evidence to support the claim that banning alcohol advertising and sponsorship marketing would impact the amount of alcohol consumed or the amount of alcohol-specific harms that occur in Scotland”.

Further, it found that:

⁵³ Michael Siegel, Craig S. Ross, Alison B. Albers, William DeJong, Charles King, III, Timothy S. Naimi & David H. Jernigan (2016) The relationship between exposure to brand-specific alcohol advertising and brand-specific consumption among underage drinkers – United States, 2011–2012, *The American Journal of Drug and Alcohol Abuse*, 42:1, 4-14.

⁵⁴ Nelson, J.P. (2001), "Alcohol advertising and advertising bans: A survey of research methods, results, and policy implications", Baye, M.R. and Nelson, J.P. (Ed.) *Advertising and Differentiated Products* (Advances in Applied Microeconomics, Vol. 10), Emerald Group Publishing Limited, Bingley, pp. 239-295.

⁵⁵ B. Lee, V. Tremblay. Advertising and the US demand for beer. *Appl. Econ.*, 24 (1992), pp. 69-76.

⁵⁶ Duffy M. Advertising in consumer allocation models: Choice of functional form. *Applied Economics*. 2001;33:437–456.

⁵⁷ Molloy E. This Ad is for You: Targeting and the Effect of Alcohol Advertising on Youth Drinking – *Health Economics*, Vol 25 Issue 2 pp 148-164.

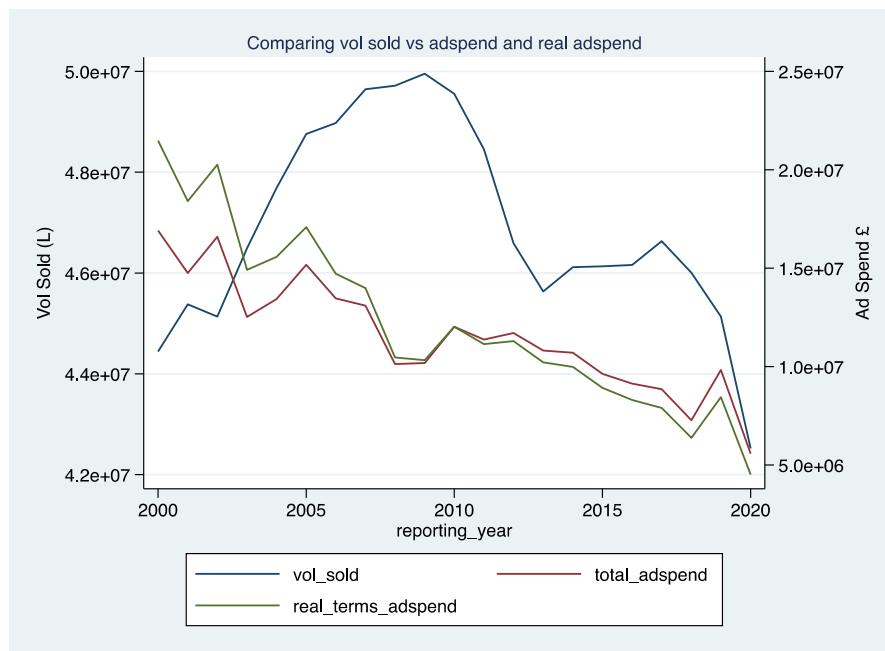
⁵⁸ Siegfried N, Pienaar DC, Ataguba JE, Volmink J, Kredt T, Jere M, Parry CDH. Restricting or banning alcohol advertising to reduce alcohol consumption in adults and adolescents. *Cochrane Database of Systematic Reviews* 2014, Issue 11.

⁵⁹ <https://www.cochranelibrary.com/about/about-cochrane-reviews>.

⁶⁰ "Analysis of alcohol advertising and sponsorship marketing spend, alcohol consumption, and alcohol-specific harms" (2022), CREDOS.

“Alcohol advertising spend appears to have an inverse relationship to each of the alcohol-specific harms investigated. This means that over the past 20 years, even though advertising spend has increased, harms have decreased by comparison.”

In a supplementary paper⁶¹, the following table was published, which shows the total expenditure as well as the real terms expenditure on alcohol advertising in comparison to alcohol sales in Scotland.



*Fig 5 – Source: CREDOS (2022) – see FN 56 and 57.

This data has significant evidential weight because it is material fact. It is not a model. It is not derived from a focus group. It is not “a judgement call”. It is Scottish data showing the true long-term picture. The advertising spend data is derived from Nielsen and includes all spend on TV, radio, press, outdoor and cinema etc. The alcohol sales data is derived from the Public Health Scotland MESAS Report 2021⁶².

The data shows that, even adjusted for real terms, there is no causal or even correlative link between advertising and the amount of alcohol sold. In fact, it confirms that, in Scotland at least, the relationship has been an inverse one.

- **Experimental evidence:** in this Bradford Hill criterion, the approach appears to me to be to try manipulation or exploration of “other variables” which might influence the suggested association between marketing and consumption, in order to rule those variables out. The evidence that such tinkering has resulted in an evidential basis for our purposes appears to me to be threadbare.

Sargent & Babor point to a study by Noel et al (2020)⁶³. This study, which focuses on digital marketing of alcohol, as opposed to more traditional marketing, takes us no further step towards a casual link:

“The effects of simple exposure to digital alcohol advertising were inconclusive.”

⁶¹ “Comparing alcohol vol sold in Scotland against real terms ad spend in Scottish media regions” (February 2023), CREDOS

⁶² <https://publichealthscotland.scot/publications/mesas-monitoring-report-2021/>

⁶³ Noel J. K., Sammartino C. J., Rosenthal S. R. Exposure to digital alcohol marketing and alcohol use: A systematic review. Journal of Studies on Alcohol and Drugs. 2020;(Supplement 19):57–67.



Sargent & Babor then refer to Henehan et al (2020)⁶⁴ The authors of that study, which looks at cognitive behaviours say:

“Exposure to alcohol advertising may affect underage perceptions of risks and rewards of alcohol use. Nevertheless, the ability to draw causal conclusions is limited because of study designs.”

So, once again, there is no causal link here. Sargent & Babor then refer to an experimental study focused on a neurobiological model, viz, Courtney et al (2020)⁶⁵. This study concludes that:

“...exposure to alcohol marketing could plausibly influence underage drinking by sensitizing prefrontal–reward circuitry.”

The authors are clear in saying that their work is an “initial starting point”. This, in my assessment, is below even the level of correlation.

The authors also, in fairness, point to studies which question the utility of assessing neural responses and drinking outcomes⁶⁶ so I can only charitably describe this type of data as “emerging” and there is no clear picture, certainly nothing to evidence undue influence of advertising on youth drinking patterns.

- **Coherence:** this Bradford Hill criterion relates to what I would call “real world” evidence of alcohol use by children having seen alcohol marketing. Is this a known problem which can be justified with probative, empirical evidence?

This is possibly the weakest criterion as regards attempts to establish a causal link. Even Sargent & Babor appear uninvested in trying to present much of a case here. They say:

“Coherence with current knowledge of the health risk condition (i.e., youth alcohol consumption and binge drinking), is difficult to estimate from the studies that have been conducted”.

They go on to say:

“In fact, as marketing expenditures have increased globally, alcohol consumption by youth has declined in high-income countries”.

This admission appears to me to cut across not just the “Coherence” criterion but the wider effort to present all of this as somehow establishing a causal link, or indeed any link at all between advertising of alcohol, and alcohol consumption or harm in children or young people.

- **Analogy:** this, the final Bradford Hill criterion, as applied to our purposes, hypothesises that if exposure to marketing of some other product can be shown to lead to consumption of that product, then that is a good basis for supposing that the same applies to alcohol. I find this concept to be at odds with the earlier attempts to suggest that alcohol is somehow a product which inculcates a higher level of compulsion, as opposed to other products, that children see advertised. The comparator used by Sargent & Babor is tobacco.

This appears to me, however, to be another criterion that Sargent & Babor do not laud *per se*:

“Analogy is not typically considered a strong criterion for causal inference.”

⁶⁴ Henehan E. R., Joannes A. E., Greaney L., Knoll S., Wong Q. W., Ross C. S. Youth cognitive responses to alcohol promotional messaging: A systematic review. *Journal of Studies on Alcohol and Drugs*. 2020;(Supplement 19):26–41.

⁶⁵ Courtney A. L., Casey B. J., Rapuano K. M. A neurobiological model of alcohol marketing effects on underage drinking. *Journal of Studies on Alcohol and Drugs*. 2020;(Supplement 19):68–80.

⁶⁶ See Courtney A. L., Rapuano K. M., Sargent J. D., Heatherton T. F., Kelley W. M. Brain reward responses are behaviorally relevant: The authors respond. *Journal of Studies on Alcohol and Drugs*. 2018b;79:41–42; and Meyer R. E. Back to the future . . . or . . . is that all there is? A commentary on Courtney et al. (2018) *Journal of Studies on Alcohol and Drugs*. 2018;79:39–40



They only cite one other study, Weitzman & Lee (2020)⁶⁷. Yet, the Weitzman & Lee study opens with the following statement:

“A diverse research literature demonstrates that adolescent exposure to such advertising is associated with drinking attitudes and behavior, but no scientific body has determined these associations to be causal.”

Again it appears curious at least that, following a close read of Sargent & Babor’s reliance on other scholarly articles, time and time again those other articles declare there is no causal link. Yet notwithstanding that, Sargent & Babor do not simply argue that there is one, but even use the title of their paper as a totem. I am left with the impression that a form of confirmation bias is at play.

Turning back to Weitzman & Lee, they go on to mount an extremely bold case that, at least as far as this specific criterion goes, a causal link is made out on the basis that alcohol can be compared to tobacco. One of the precepts of this is the potentiality for addiction and therefore harm, but there is no analysis of how addictive or harmful one commodity is in comparison to the other. I struggle to see the evidential basis, or real-world utility, of applying a doctrine based on the biological link of smoking to lung cancer to a hypothesised link, such as it may be, between alcohol advertising, and alcohol consumption by any cohort.

Underlying the analogousness of the advertising of alcohol to any other product is a more fundamental question: in mature markets, just how influential is advertising at all? According to the New Palgrave Dictionary of Economics:

“Most practitioners contend that advertising follows rather than leads cultural trends, in part because most advertisers are reluctant to appear out of step with society”⁶⁸.

Paragraph 3.13

“...research carried out in Scotland and the UK supports a link between exposure to marketing and consumption.”

Analysis of 3.13

This basis of this statement is the following study: Gordon et al (2010)⁶⁹. Firstly, I should observe that elements of this study focus on forms of advertising which are outside the scope of the Scottish Parliament’s jurisdiction – social media, e-marketing and so on.

In this study (located in the West of Scotland), 47% of 350 thirteen-year-olds who were non-drinkers were found to have an “uptake of drinking” when they had reached fifteen. In examining what might have led them to have started consumption, the study finds:

“no association was found between uptake of drinking and baseline awareness of alcohol marketing”.

It also looks at whether there was an association between alcohol marketing and frequency of drinking and finds:

“no association was found between uptake of fortnightly drinking at follow-up and number of brands recalled at baseline”.

⁶⁷ Weitzman M., Lee L. Similarities between alcohol and tobacco advertising exposure and adolescent use of each of these substances. Journal of Studies on Alcohol and Drugs. 2020;(Supplement 19):97–105.

⁶⁸ 2008: Page 32.

⁶⁹ Gordon R, MacKintosh AM, Moodie C. The impact of alcohol marketing on youth drinking behaviour: a two-stage cohort study. Alcohol Alcohol. 2010 Sep-Oct;45(5):470-80.



They also go on to say:

“Marketing is of course only one of a number of variables that can influence youth drinking with other factors such as family drinking and peer influence also significant, often to a greater degree.”

For the Scottish Government to put forward this study as evidence that advertising leads to consumption amongst young people, when the study has such differing outcomes, appears unwise.

Paragraph 3.14

“The overall effect of alcohol marketing is cumulative; the amount and frequency of drinking by young people rises in line with the degree of exposure to alcohol marketing”

Analysis of 3.14

My comments above concerning the influence of marketing over consumption trends are, of course, important to reflect on. But in this particular statement, the Scottish Government is relying on a separate study, namely Gordon et al (2011)⁷⁰. I was unable to access the full-text. The abstract says the following:

“Significant associations were found between awareness of, and involvement with, alcohol marketing and drinking behaviour and intentions to drink alcohol in the next year. Given these associations, our study suggests the need for a revision of alcohol policy: one limiting youth exposure to these seemingly ubiquitous marketing communications.”

See my comments on a related study by the same authors in my analysis at **14.1** below.

Paragraph 3.15

“Being exposed to a piece of alcohol marketing does not necessarily cause immediate or short-term alcohol consumption of the product advertised amongst children and young people. It is not a simple relationship.”

Analysis of 3.15

This appears to me to be the first statement in the consultation which concedes the true complexity of the picture. Here there is a reference to Petticrew et al (2017)⁷¹. This paper argues that previous studies debunking the notion that advertising influences consumption are too narrow because, they posit, advertising is not just about trying to influence consumption, but it is also about the solidification of what they call an “alcogenic environment”. In other words, a purpose of advertising is to ensure that the socio-cultural *zeitgeist* is not a hostile environment to alcohol brands.

The phrase “alcogenic environment” is apparently borrowed from another study, Fone et al (2012)⁷², but in fact the phrasing there emanates from yet another study, Huckle et al (2008)⁷³ and is in wider general academic use. An alcogenic environment is a descriptor used in these wider studies to denote a societal drinking culture or, to be clearer, environmental factors which promote a culture of excess drinking. The 2012 and 2008 studies are about outlet density, as opposed to presence of advertising. The issue of outlet density is worth a small sidebar as it is something which is a very important part of the ongoing debate around licensed premises and overprovision of licensed premises.

⁷⁰ Ross Gordon, Fiona Harris, Anne Marie Mackintosh & Crawford Moodie (2011) Assessing the cumulative impact of alcohol marketing on young people's drinking: Cross-sectional data findings, *Addiction Research & Theory*, 19:1, 66-75.

⁷¹ Petticrew M, Shemilt I, Lorenc T, Marteau TM, Melendez-Torres GJ, O'Mara-Eves A, Stautz K, Thomas J. Alcohol advertising and public health: systems perspectives versus narrow perspectives. *J Epidemiol Community Health*. 2017 Mar;71(3):308-312.

⁷² Fone D, Dunstan F, White J, et al. Change in alcohol outlet density and alcohol-related harm to population health (CHALICE). *BMC Public Health* 2012;12: 428.

⁷³ Huckle T, Huakau J, Sweetser P, Huisman O, Casswell S: Density of alcohol outlets and teenage drinking: Living in an alcogenic environment is associated with higher consumption in a metropolitan setting. *Addiction* 2008, 103(10):1614–162.



Density was explored, in the Scottish context, in Richardson et al (2014)⁷⁴, known in licensing circles as “the CRESH Report”. The 2014 study presented research regarding the association between numbers of licensed premises and alcohol harm, but also said: “*while it suggested significant associations between outlet availability and alcohol-related harm we cannot conclude that the relationship is causal.*” This report was relied on heavily by AFS and others to influence local licensing policy around overprovision, but the absence of a causal link meant that the evidential strength of the study was weak, and criticised in licensing hearings. During this period the Scottish Government Guidance to Licensing Boards⁷⁵ said that:

*“The results of all consultation should be evaluated to identify robust and reliable evidence which suggests that a saturation point has been reached or is close to being reached, **always provided that a dependable causal link can be forged between that evidence and the operation of licensed premises in a locality.** [original emphasis]”*

The need to establish a causal link was criticised by AFS in their paper “Review of Statements of Licensing Policy 2013–2016”⁷⁶ as setting the bar “too high” and in public briefings as “unhelpful”.

The response to this criticism came in the form of a further AFS paper in April 2018⁷⁷, which was an attempt to put forward a lesser test for licensing boards to have regard to in place of the causal link, by referencing the research through the alternative prism of whether the results were “statistically significant”. That, of course, is not the legal test and a licensing board which put the causal link to one side in place of research which suggests an association was formed which is “statistically significant” would, in my view, have fallen into legal error.

By the time AFS issued their next review of local licensing policies 2018 - 2023⁷⁸, their view was that the applicability of the need for a causal link varied from board to board, as did their understanding of what the causal link was or should be. Their focus appears to be that burden of proof in a licensing hearing, namely, the balance of probabilities, is a test somehow decoupled from the requirement to evidence a causal link. What this brings into focus is whether the burden of proof in licensing is at odds with the causal link, or perhaps over-rides it in some way. In fact, properly understood, the burden of proof is not at odds with the requirement to demonstrate a causal link and these are two concurrent philosophies within the quasi-judicial environment of licensing law: probability is a higher test than mere possibility. In addition, criticism of the structural requirement to evidence a causal link at all seems to me to be based on dissatisfaction with a hoped-for consistent outcome – namely the refusal of licences, and is therefore an example of why the *onus* of proof exists as a rule of law.

What all this appears to demonstrate is a consistent effort across different aspects of alcohol policy to fetter the rule of law because the outcomes of those rules are not considered desirable from an ideological perspective – the grant of a licence is always bad; the availability or advertising of alcohol is clandestinely seductive; display of alcohol is corruptive; consumption of alcohol is harmful. These tenets are driven by an apparent hegemonical doctrine in the field of public health discourse – that alcohol must always be viewed through the prism of harm. This ignores the impartiality of the licensing system; the inherent discretionary approach, which allows local licensing boards to consider the merits as well as the demerits. I sum this up as follows⁷⁹:

“If no ground of refusal applies, the board must grant the application. And the opposite is also true. It is therefore neither a granting nor a refusing Act. It is neutral, based on the merits or demerits of the particular application. To put it another way, it is directory not discretionary for both grant or refusal depending on whether a ground of refusal applies. This is not the same in every licensing regime in Scotland. Under the Gambling Act 2005, for example, a licensing

⁷⁴ Richardson EA, Hill SE, Mitchell R, Pearce J, Shortt NK. Is local alcohol outlet density related to alcohol-related morbidity and mortality in Scottish cities? *Health Place*. 2015 May;33:172-80

⁷⁵ First Edition, April 2007.

⁷⁶ No longer available online.

⁷⁷ Alcohol Outlet Availability and Harm in Scotland, Alcohol Focus Scotland, April 2018 (<https://www.alcohol-focus-scotland.org.uk/media/310762/alcohol-outlet-availability-and-harm-in-scotland.pdf>)

⁷⁸ <https://www.alcohol-focus-scotland.org.uk/media/440017/afs-review-of-statements-of-licensing-policy-2018-2023.pdf>

⁷⁹ McGowan, S. (2021) “McGowan on Alcohol Licensing”, Edinburgh University Press: Pg 46.



board “must aim to permit” the grant of a new gambling licence – the default position is therefore that the gambling licence should be granted. Clearly, that is not the case in the alcohol licensing system. A balance requires to be struck. This balance must be underpinned, therefore, by properly evidenced reasoning and that is where the requirement for causal evidence comes into play, and has permeated licensing decisions for decades.”

It also, of course, ignores the reality that whilst it may sometimes be true that alcohol consumption leads to harm, and whilst it may sometimes be true that advertising of alcohol might affect an individual in an adverse way, these things are simply two potential outcomes amongst a myriad of outcomes, some of which can be neutral; or indeed positive, because if you view the issue through the prism of harm alone then you are not seeing the full picture. On this point, it seems to me there is a dearth of effort to understand the strengths of associations between alcohol and positive outcomes for individuals, groups and society. What of the positives around social cohesion or combatting loneliness, which licensed premises may bring to a community? The absence of acceptance that positives such as these exist is striking to me, when these are concepts very familiar to those of us at the coal-face of local licensing decisions.

Paragraph 3.16

“Seeing alcohol marketing likely influences pro-alcohol feelings and attitudes, and shapes positive associations and expectancies around alcohol in general as well as around specific alcohol brands.”

Analysis of 3.16

The basis for this statement is McClure et al (2013)⁸⁰. This study looks at whether alcohol advertising was purposefully designed in a way to impact the cognitive decision making of young people to engender binge drinking. The researchers set out to try to find evidence that alcohol marketing is designed to “flick switches” in the brain towards identity or allegiance and relies heavily on examples around the idea of young people identifying with “*social lifestyle portrayed in alcohol commercials*”.

This is a US study and the evidential value of this in comparison to the UK, where there is a broad and detailed regulatory environment already in place which specifically prohibits marketing that makes alcohol attractive or desirable to young people, coupled with a licensing regime which also bans promotions which “*relate specifically to an alcoholic drink likely to appeal largely to persons under the age of 18*”⁸¹, makes this a questionable basis on which to support a ban on advertising generally. On top of this, the authors of this 2013 study do not hold their paper out to demonstrate a causal link between marketing and binge drinking in young people; they say further longitudinal studies would be needed to see if such a link could be established, and they also acknowledge that they could not evidence that seeing marketing of alcohol was what led to any “*favourable alcohol cognitions*” because the sample group were already consuming alcohol; any “*favourable cognitions*” may have arisen from consumption, from peer pressure, social setting, or any number of other factors.

On the point of “specific alcohol brands” which is noted in Paragraph 3.15, the authors have this to say:

“Drinker identity and having a favorite brand to drink would probably be less relevant to non-drinkers, because some experience with drinking is needed for an individual to access these cognitions.”

The phrase “*some experience with drinking is needed*” is one I find to be important. Here the 2013 authors are telling us that advertising does not in fact lead someone who does not drink to form positive associations with a particular brand. This does not sit comfortably with any wider suggestions that seeing an advert for a particular brand will innately “flick a switch” to entice a person to want to

⁸⁰ McClure AC, Stoolmiller M, Tanski SE, Engels RC, Sargent JD. Alcohol marketing receptivity, marketing-specific cognitions, and underage binge drinking. *Alcohol Clin Exp Res*. 2013 Jan;37 Suppl 1(Suppl 1): E404-13.

⁸¹ Licensing (Scotland) Act 2005, Schedule 3, Paragraph 8(2)(a).



consume that brand, and in fact it is the consumption of the brand which may lead to that brand being favoured.

Paragraph 3.17

“Academic evidence is clear that in the alcohol context specifically, future attitudes are set in adolescence, a crucial period for identity and attitude forming”

“If pro – alcohol attitudes and drinking patterns are formed in adolescence then these build over time and positively influence alcohol consumption decisions later in life.”

Analysis of 3.17

Let’s look first of all at the claim that “*academic evidence is clear...*”. The basis of this statement within the consultation is a hyperlink to RoR. Again, it is frustrating that no clear link is provided to what exact academic evidence is being referred to, as is the continued deference to RoR. My best guess is that this relates to the following statement⁸²:

“Alcohol marketing provides cues to the brain that stimulate the desire to drink, to which an adolescent’s developing brain is particularly responsive.”

The justification offered for this statement is in Courtney et al (2020)⁸³. This is the same study relied upon by Sargent & Babor which I discussed above in relation to the “Experimental Evidence” criterion under the Bradford Hill approach. As I say above, this study is not held out to be evidence of a causal link and the authors themselves say the article is a “*starting point*”. They even question the utility of assessing neural responses and drinking outcomes, so for me it is bold to assert “academic evidence is clear” when this appears to be based only on this 2020 study – which makes no such claim.

Paragraph 3.17 then goes on to talk about a “positive influence” in later life. Here we have a link to Hessari et al (2019)⁸⁴. But in this research, the claim is not that advertising targets underage drinkers. It is that in around one third of the studies examined, “younger” drinkers were said to be an important target market. In this context, “younger drinkers” does not actually mean children or young people, but adults who are of legal drinking age. Younger drinkers are not underage drinkers. So, there is a clear disconnect here: whilst it is possible there is another study somewhere which purports to show that exposure to alcohol advertising in the formative years of adolescence means the person is more likely to drink in later years – this is not it.

Lastly, in relation to the “later in life” wording there is another hyperlink to RoR with no further explanation. The “later in life” wording appears to me to emanate from Page 41 of RoR which says:

“Those who start drinking at an earlier age have an increased risk of developing alcohol dependence later in life.”

This sentence is supported with a reference to Hingson et al (2006)⁸⁵. This study is about the impact of consumption in early years and what association that has for harmful drinking patterns in later life. The study has nothing to say about how advertising or marketing might be at play in those decisions.

Paragraph 3.18

⁸² RoR, Page 41.

⁸³ Courtney, A. L. et al. (2020). A neurobiological model of alcohol marketing effects on underage drinking. *Journal of Studies on Alcohol and Drugs, Supplement*, (s19), 68-80.

⁸⁴ Maani Hessari N, Bertcher A, Critchlow N, Fitzgerald N, Knai C, Stead M, Petticrew M. Recruiting the “Heavy-Using Loyalists of Tomorrow”: An Analysis of the Aims, Effects and Mechanisms of Alcohol Advertising, Based on Advertising Industry Evaluations. *Int J Environ Res Public Health*. 2019 Oct 24;16(21): 4092.

⁸⁵ Hingson, R. W. et al. (2006). Age at drinking onset and alcohol dependence: age at onset, duration, and severity. *Archives of Pediatrics & Adolescent Medicine*, 160(7), 739-746.



“It is theorised that the way alcohol is marketed, in a desirable way with fun and sociable occasions depicted, influences young people to like the marketing, want to emulate it and may create positive expectancies around alcohol or positive ideas about the effects of drinking.”

“Children move through different stages of response to alcohol marketing from exposure, to noticing, remembering, liking and then participating.”

Analysis of 3.18

The “theory” underpinning the first sentence comes from Austin et al (2006)⁸⁶. This study is an exploration of what is called the “message interpretation process” (“MIP”) which is a model to understand how the brain receives and processes information from media. The study says that how an individual interprets the message (i.e., what the advert is trying to say) is *“at least as important as media exposure”* to alcohol use in adolescents. In other words, the individuals own critical thinking and reaction to an advert for alcohol is just as important as the message the advert is itself trying to convey. That appears, to me at least, to underscore a wider notion that there is some form of personal choice at play, that even young people whose critical faculties may not have fully developed, still have their own mind and their own decision to make; and therefore, are not blithely coerced or compelled.

The second sentence is a further link to RoR and turns out to be a direct lift of the following sentence from Page 41:

“Researchers suggest that children move through different stages of response to alcohol marketing, from exposure, to noticing, remembering, liking, and then participating.”

This sentence is linked to McClure et al (2013), the same study referred to in my analysis of Paragraph 3.16 above.

Paragraph 3.19

“We know that children and young people find alcohol adverts and brands appealing.”

Analysis of 3.19

The sentence above is a reference to Boniface et al (2022)⁸⁷. The researchers here examined whether adverts were appealing to a sample of 2582 young people aged between 11 and 17. I doubt I can describe the results as compelling. An advert for Smirnoff had “overall positive reactions” for 52% of that sample. An advert for Fosters climbed up to 53%, and an advert for Haig Club was only 34%. Yet these advertisements are described as “commonly appealing” to underage adolescents. Leaping to a conclusion that alcohol adverts and brands are therefore appealing to children and young people writ large, is not well-founded, and again pays little homage to the existing regulatory framework I refer to elsewhere (ASA, CAP, 2005 Act).

Paragraph 3.20

“Multiple studies, including in Scotland, have shown a link between how much a young person likes an alcohol advert and their drinking behaviours.”

“Young people who had positive reactions to adverts were 40% more likely to be a higher risk drinker.”

Analysis of 3.20

⁸⁶ Erica Weintraub Austin, Meng-Jinn Chen, Joel W. Grube, How does alcohol advertising influence underage drinking? The role of desirability, identification and skepticism, Journal of Adolescent Health, Volume 38, Issue 4, 2006, Pages 376-38.

⁸⁷ S Boniface, N Critchlow, K Severi, A M MacKintosh, L Hooper, C Thomas, J Vohra, Underage Adolescents’ Reactions to Adverts for Beer and Spirit Brands and Associations with Higher Risk Drinking and Susceptibility to Drink: A Cross-Sectional Study in the UK, Alcohol and Alcoholism, Volume 57, Issue 3, May 2022, Pages 347–356.



The reference to “multiple studies” here comes with a hyperlink to just one study: Boniface et al (2022) discussed immediately above in relation to Paragraph 3.19. The reference to Scotland is a hyperlink to Gordon et al (2010), which I critique in my analysis of Paragraph 3.12 above. The second sentence is just another link to Boniface (2022), meaning the same study is used twice.

Paragraph 3.21

“Underage adolescents in Scotland demonstrate high levels of brand knowledge and preferences for certain brands, even before they have started to drink.”

Analysis of 3.21

The citation for this assertion is Morey et al (2017)⁸⁸ – see my analysis of Paragraph 3.7 where this paper is also referenced.

Paragraph 3.22

“Young people perceive some brands as desirable with a positive image and others as undesirable. Some brands are seen positively to encapsulate maturity, masculinity or femininity and an acceptance amongst peers whilst others are seen negatively to encapsulate immaturity or embarrassment among peers.”

Analysis of 3.22

This paragraph links to Gordon et al (2009)⁸⁹. I was unable to access the full-text of this article but the abstract indicates the findings were based on focus groups and one-to-one interviews. It says:

“Much marketing activity featured content that appealed to young people and appeared to influence their well-developed brand attitudes.”

Without the full-text further critique is reserved, but I would pause to observe that the study is from 2009 and therefore predates the current regulatory regimes around alcohol advertising (e.g. via ASA and under the 2005 Act (as amended)).

Paragraph 3.23

“Young people who have greater awareness and familiarity with brands or who have developed brand preferences are more likely to drink more alcohol”

Analysis of 3.23

This sentence is another link to RoR. It appears to me to come from the following line from Page 43:

“The development of brand preferences and allegiance from a young age is significant because young people who have greater awareness and familiarity with brands, or who have developed brand preferences, are more likely to drink more alcohol.”

This sentence is then linked to three additional resources: Unger et al (2003)⁹⁰; Lin et al (2012)⁹¹ and Morgenstern et al (2014)⁹².

⁸⁸ Yvette Morey, Douglas Eadie, Richard Purves, Lucie Hooper, Gillian Rosenberg, Stella Warren, Henry Hillman, Jyotsna Vohra, Gerard Hastings and Alan Tapp (2017) Youth engagement with alcohol brands in the UK. Cancer Research UK.

⁸⁹ Gordon, Ross & Moodie, Crawford & Eadie, Douglas & Hastings, Gerard. (2009). Critical social marketing – The impact of alcohol marketing on youth drinking: Qualitative findings. International Journal of Nonprofit and Voluntary Sector Marketing. 15.

⁹⁰ Unger, J. B. et al. (2003). Alcohol advertising exposure and adolescent alcohol use: a comparison of exposure measures. Addiction Research and Theory, 11(3), 177-193.

⁹¹ Lin, E. Y. et al. (2012). Engagement with alcohol marketing and early brand allegiance in relation to early years of drinking. Addiction Research and Theory, 20(4), 329-338.

⁹² Morgenstern, M. et al. (2014). Favourite alcohol advertisements and binge drinking among adolescents: a cross-cultural cohort study. Addiction, 109(12), 2005-2015.



Unger, based on research with 591 adolescents in California in 2003, suggests associations between different types of advertising exposure and alcohol use and that:

“both cognitive and affective responses to alcohol advertising may be risk factors for adolescent alcohol use.”

Lin is a study based on telephone interviews with 2538 13 and 14-year-olds in New Zealand. I was not able to access the full-text of this article but the abstract says:

“while exposure to all forms of marketing are associated with drinking by young people, measures of more active engagement, such as owning merchandise and downloading screensavers are stronger predictors of drinking. Having established a brand allegiance, at this early age, was related to not only drinking and future intentions to drink but also drinking patterns including consuming larger quantities.”

Lastly, Morgenstern conducted a longitudinal study of some 12,464 adolescents (82% follow-up) from Germany, Italy, Poland and Scotland. There was an 82% follow-up rate, meaning implications for endogeneity and generalizability. I was not able to access the full-text of this article but the abstract says:

“Among European adolescents naming a favourite alcohol advertisement was associated with increased likelihood of initiating binge drinking during 1-year follow-up, suggesting a relationship between alcohol marketing receptivity and adolescent binge drinking.”

Whilst my comments in relation to this clutch of three texts comes with the caveat that I have only been able to review the abstracts, these do not suggest anything other than associations or likelihoods. This, of course, is not to say that such associations do not exist: but with caveats. In Unger, for example, there was no positive association between lifetime drinking and seeing alcohol advertising as an exposure measure; and in Lin no association was found between consumption (or level of consumption) of alcohol in the past-year when assessing marketing awareness or engagement with traditional marketing. In fact, a review by Finan et al (2020)⁹³ of multiple cross-sectional studies including Unger and Lin could only go as far saying:

“Across alcohol use outcomes, various types of marketing exposure, and different media sources, our findings suggest that cross-sectional evidence indicating a positive relationship between alcohol marketing exposure and alcohol use behaviors among adolescents and young adults was greater than negative or null evidence.”

Paragraph 3.24

“Advertising industry case studies of alcohol advertising campaigns bear this out with internal documents referencing aspirations of campaigns to increase sales, introduce consumers to the product and, in some cases, to recruit young heavier drinkers or “the heavy-using loyalists of tomorrow.”

Analysis of 3.24

This quote contains two hyperlinks both of which link to the same study, namely Hessari et al (2019), which I reference in relation to Paragraph 3.16 above – and so my observations there are relevance here. I would however like to focus here on the pejorative phrase “heavy-using loyalists of tomorrow”. This phrase, quoted here and also within the name of the Hessari paper, is emotive. It comes from a marketing case study of a Famous Grouse campaign in 2006. Here is the use of the phrase within context:

⁹³ Laura J. Finan, Sharon Lipperman-Kreda, Joel W. Grube, Anna Balassone, and Emily Kaner (2020) Alcohol Marketing and Adolescent and Young Adult Alcohol Use Behaviors: A Systematic Review of Cross-Sectional Studies - Journal of Studies on Alcohol and Drugs, Supplement 2020 :s19 , 42-56.



“Our first advertising task was to protect and build this core drinker base by persuading existing consumers and drinkers of competitive blends to choose The Famous Grouse more often. In the longer term we had to attract more younger drinkers – the heavy-using loyalists of tomorrow”.

The reference to this phrase in the Scottish Government document is used in such a way that, it appears to me, implies a targeted action to seek to attract young people. However, as I noted above, the phrase “younger drinkers” does not mean under-age drinkers but is actually adults of legal drinking age, i.e. persons 18 and above (I assume a bracket of 18 to 25 although this is not explicitly stated), and must be read against the prevailing longer-term downward trend of under-age consumption. The phrase “heavy drinker” or “heavy user” refers to someone who drinks above the recommended unit limit (on which, see my comments below in **3.27**). Understood properly, the wording used here is by an industry marketing professional using marketing and academic *patois*, and in my view should not be read as if inferring a more clandestine motive. It is unhelpful that the phrase “younger drinker” is left hanging in the Scottish Government document as if referring to under-age drinkers, and this mis-directs the reader who does not look beyond.

Paragraph 3.25

“The claim often made that alcohol marketing only influences switching between brands and does not have any influence on attitudes or feelings towards alcohol generally is not consistent with the academic evidence”

Analysis of 3.25

I would offer a corrective version of the sentence above as follows:

“The claim often made that alcohol marketing only influences switching between brands and does not have any influence on attitudes or feelings towards alcohol generally is not consistent with the academic evidence [presented here](#).”

There is, in fact, a significant amount of research available which presents a contrary view to that espoused in RoR and within the Scottish Government consultation. I have presented multiple examples of academic studies which point to marketing being about directing choice within my analysis (see, for example, the long-list of studies I refer to under the Bradford Hill criterion of “plausibility” which is explored in relation to **3.11** above). The absence of this contrary evidence is, to my reading, a failure on the part of the Scottish Government who have prepared this consultation in a silo, with a manifest influence.

It is incumbent upon the Government to present policy which is not the wish-list of agenda-led campaign groups, and is not cultivated in silos, but policy which has a rounded, joined-up approach taking into account all evidence including contrary positions, and assessing all impacts, be they fair or foul.

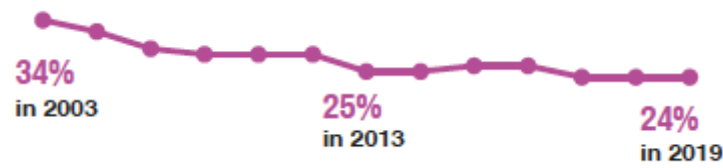
Paragraph 3.27

“In Scotland, around one in four people drink at hazardous or harmful levels, and 1% (around 38,000 people) may be dependent on alcohol.”

Analysis of 3.27

This data is taken from the Scottish Health Survey 2019⁹⁴. What is missing is the wider context and patterns over a longer, and therefore more instructive, period of time. The 2019 survey provides the following table* which shows a positive downward trend of persons who drink at hazardous or harmful levels, dropping from 34% in 2003 to 24% in 2019.

⁹⁴ <https://www.gov.scot/publications/scottish-health-survey-2019-volume-1-main-report>



*Fig 6 – Source: Scottish Health Survey 2019: Chapter 4, Alcohol: Page 78

There is further helpful context provided in the 2019 survey as follows:

“In 2019, 9.9 litres (L) of pure alcohol were sold per adult in Scotland (same as in 2018), equivalent to 19.1 units per adult per week, representing enough alcohol for every adult to substantially (by 36%) exceed the low risk weekly drinking guideline (14 units); 23% of off-trade alcohol sold was on promotion in 2019, a decrease from 55% in 2011. The 9.9 litres of pure alcohol per adult represents a 3% decrease from 2017 (10.2 litres) and is the lowest level seen since in Scotland since 1994.”

It is also relevant to consider the descriptors as to what constitutes someone who drinks at a hazardous or harmful level. Drinking at “harmful or hazardous levels” means you drink over 14 units a week. What constitutes 14 units may require some elaboration and the following graph is offered⁹⁵:



*Fig 7 – Source: see FN 80

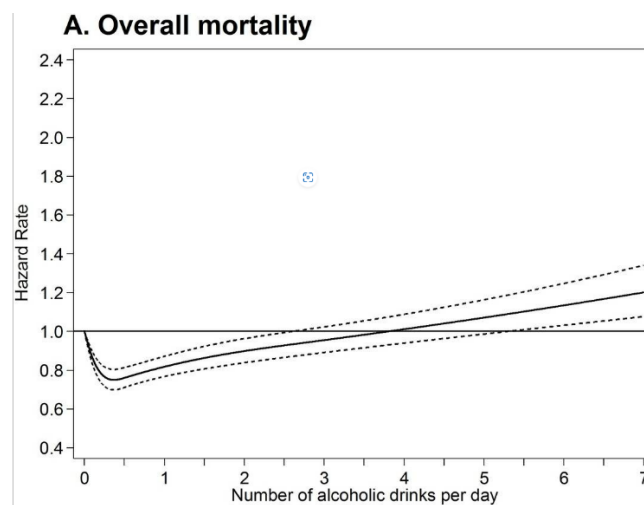
A further consideration here is that the guidelines were changed in 2016⁹⁶. The amount considered harmful or hazardous was lowered from the previous 21 units per week for men, to 14 units. The level for women was 14 and remained at 14. What this means is that, had the guidelines stayed at 21 for men, the drop from 2013 to 2019 would have been greater; in other words, the total percentage of persons classed as harmful or hazardous is higher than it would have been had the guidelines remained at 21 for men. This underlying move of the goalposts is often overlooked.

This analysis helps to frame recent efforts by some to reclassify alcohol as having “no safe level” of consumption at all and, despite the significant presence of a vast number of academic studies which describe the health benefits of moderate alcohol consumption (I highlight a clutch of these at 7.1 below), is suggestive that the end-game of moving to a policy position of “no safe level” is an ideological one, allowing those who espouse it to sully the concept of “responsible drinking”. This dogmatic approach seems wilfully blind to the long established so-called “J Curve” theorem which has been proven in multiple studies over decades to indicate that modest consumption is better than no

⁹⁵ <https://www.alcohol-focus-scotland.org.uk/alcohol-information/drinking-too-much/>

⁹⁶ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/489795/summary.pdf

consumption at all. A classic depiction (amongst many⁹⁷) of the “J Curve” is from Kunzmann et al (2018)⁹⁸ as follows:



*Fig 8 – Source: Kunzmann et al (2018), see FN 93.

Coming back to the recommended guidelines, it is relevant because RoR defines those with “an alcohol problem” as not just people who have an alcohol use disorder but also those who drink above those guidelines (at Page 49) which seems to be at odds with the messaging in the guidelines and the graphic above, ie “low risk”. For me, therefore, the categorisation in RoR is flawed and unhelpful to determine a true evidential picture. There is a long spectrum where at one end is an adult who drinks modestly above 14 units a week, and at the other is an adult who consumes egregious amounts or may be addicted to alcohol.

Again, I would argue that the wider picture should be noted to ensure balance. The most recent Scottish Health Survey is the 2021 issue quoted above, but they go back in detail to 2011 and even have information from 1995 to 2010⁹⁹. What these surveys show is that the average units per week intake for 2021 was 11.3. This is a drop from 13.1 in the 2011 survey and is in fact the lowest on record. The statistics also confirm that approximately 77% of the adult population drink below the 14-unit marker (“the moderate majority”).

Paragraph 3.28

⁹⁷ Studies which support the “J Curve” are legion. A small selection includes: Thun et al (1997) - Thun MJ, Peto R, Lopez AD, Monaco JH, Henley SJ, Heath CW Jr, Doll R. Alcohol consumption and mortality among middle-aged and elderly U.S. adults. *N Engl J Med.* 1997 Dec 11;337(24); Rehm et al (2001) - Rehm J, Greenfield TK, Rogers JD. Average volume of alcohol consumption, patterns of drinking, and all-cause mortality: results from the US National Alcohol Survey. *Am J Epidemiol.* 2001 Jan 1;153(1):64-71; Perreault et al (2006) Perreault K, Bauman A, Johnson N, Britton A, Rangul V, Stamatakis E. Does physical activity moderate the association between alcohol drinking and all-cause, cancer and cardiovascular diseases mortality? A pooled analysis of eight British population cohorts. *Br J Sports Med.* 2017 Apr;51(8):651-657; Inoue et al (2012) Inoue, M., Nagata, C., Tsuji, I., Sugawara, Y., Wakai, K., Tamakoshi, A., Tsugane, S. (2012). Impact of alcohol intake on total mortality and mortality from major causes in Japan: A pooled analysis of six large-scale cohort studies. *Journal of Epidemiology and Community Health, 66(5), 448-456*; Jackson et al (2015) Jackson, C. L., Hu, F. B., Kawachi, I., Williams, D. R., Mukamal, K. J., & Rimm, E. B. (2015). Black-White differences in the relationship between alcohol drinking patterns and mortality among US men and women. *American Journal of Public Health, 105, S534-S543*; Knott et al (2015) Knott, C. S., Coombs, N., Stamatakis, E., & Biddulph, J.P. (2015). All cause mortality and the case for age specific alcohol consumption guidelines: Pooled analyses of up to 10 population based cohorts. *British Medical Journal, 350*; Perreault et al (2017) Perreault, K., Bauman, A., Johnson, N., Britton, A., Rangul, V., & Stamatakis, E. (2017). Does physical activity moderate the association between alcohol drinking and all-cause, cancer and cardiovascular diseases mortality? A pooled analysis of eight British population cohorts. *British Journal of Sports Medicine, 51(8), 651-657*; Hartz et al (2018) Hartz, S. M., Oehlert, M., Horton, A., Grucza, R. A., Fisher, S.L., Culverhouse, R. C., Bierut, L. J. (2018). Daily drinking is associated with increased mortality. *Alcoholism: Clinical and Experimental Research, 42(11), 2246-2255*; Wood et al (2018) Wood, A. M., Kaptoge, S., Butterworth, A. S., Willeit, P., Warnakula, S., Bolton, T., Danesh, J. (2018). Risk thresholds for alcohol consumption: Combined analysis of individual-participant data for 599 912 current drinkers in 83 prospective studies. *The Lancet, 391(10129), 1513-1523*; Daya et al (2020) - Daya NR, Rebholz CM, Appel LJ, Selvin E, Lazo M. Alcohol Consumption and Risk of Hospitalizations and Mortality in the Atherosclerosis Risk in Communities Study. *Alcohol Clin Exp Res.* 2020 Aug;44(8):1646-1657, and more recently, Di Castelnuovo et al (2022) “Alcohol intake and total mortality in 142,960 individuals from the MORGAM Project: a population based study” *Addiction 117, 312–325*.

⁹⁸ Kunzmann AT, Coleman HG, Huang WY, Berndt SI. The association of lifetime alcohol use with mortality and cancer risk in older adults: A cohort study. *PLoS Med.* 2018 Jun 19;15(6).

⁹⁹ <https://www.gov.scot/collections/scottish-health-survey/>



“Academic evidence demonstrates that advertising can affect behaviour by presenting cues – such as a picture of an alcoholic drink or a brand – that stimulate consumption.”

“Heavy and binge drinkers react more strongly – and differently – to these cues compared to lighter drinkers. The more someone drinks, the more likely they are to pay attention to alcohol cues, which in turn leads to increased cravings.”

Analysis of 3.28

The “academic evidence” referred to in the first line of the above is another link to RoR. Delving in there are a number of elements in RoR that the Scottish Government might be winking at here. The thrust of the consultation has, by this paragraph, moved away from children and young people to “Higher-risk adult drinkers and those in recovery”, so that is where I am also now focused. The origin is clearly from following sentence, copied almost verbatim (at Page 51):

“...one way in which exposure to marketing can affect behaviour is through presenting cues – such as a picture of an alcoholic drink or a brand – that stimulate consumption.”

Two studies are offered in support of this: Engels et al (2009)¹⁰⁰, and Courtney et al (2018)¹⁰¹. The 2009 study relates to portrayal of alcohol in movies and television and is what I think Bradford Hill might describe as an experimental study. 80 male Dutch students were asked to sit in pairs in a “cosy corner” of a lab and asked to watch 1 hour movie clips including “American Pie 2”, followed by two short commercials. Alcohol and non-alcoholic drinks were made available. Having watched the clips, participants were then asked to complete questionnaires which included questions on their drinking habits. The researchers tell us that the participants were not told the purpose of the study and when asked none of them appeared to know it was about monitoring whether alcohol was consumed.

The outcome of all of this was that the people who watched movies and clips with alcohol consumption drank, on average, 1.5 glasses of alcohol more than those who watched clips without alcohol. This, the researchers boldly claim, constitutes a causal link. I find that to be a difficult conclusion to align with, especially when one considers that the group who watched clips with no alcohol on screen also consumed alcohol. Separately, this study appears to me to have more to explore, such as it may be, about the impact of watching people drink alcohol in a movie, that it does about the marketing and advertising of alcohol.

The 2018 study is an examination of neurological impacts of “cues” and fits within the body of academia exploring the Bradford Hill criterion of “plausibility”, in this case biological plausibility. The authors suggest that, having taken brain scans of 54 Dartmouth College students (which the authors tell us are all right handed although I cannot fathom why), alcohol advertising had a neurological impact on 43 of them, showing elevated brain function in an area which is linked to “*appetitive rewards and relates to consumption behaviours*”. The authors cite numerous other studies which they say demonstrate that seeing “appetitive cues” activate this part of the brain. In other words, showing someone a product which may be consumed will often create a response in a certain part of the brain.

What I do not see here, is any suggestion that this response led to actual consumption, or actual harm. The authors suggest that those students who were (self-reported) drinkers were likely to have higher activation in the brain scan when shown alcohol than those who were not drinkers, or drank less; but how that can possibly translate to anything other than people who drink have brains which are more likely to respond to seeing drink is a point I must concede I have difficulty with. In addition, how brain scans of 54 right-handed students from a Canadian college might translate as a solid platform for policy in Scotland to ban alcohol advertising is, for me, a quantum leap.

The second sentence in Paragraph 3.27 is the one about “cravings”. This is another example where the hyperlink in the consultation is simply to RoR. There are a number of references to “cravings” in

¹⁰⁰ Engels, R. C. et al. (2009). Alcohol portrayal on television affects actual drinking behaviour. *Alcohol and Alcoholism*, 44(3), 244-249.

¹⁰¹ Courtney, A. L. et al. (2018). Reward system activation in response to alcohol advertisements predicts college drinking. *Journal of Studies on Alcohol and Drugs*, 79(1), 29-38.



RoR so it is frustrating to divine the genesis. On my reading, I think the following extract is likely apposite:

“The more someone drinks, the more likely they are to pay attention to alcohol cues, which, in turn, leads to increased cravings.”

This sentence links to Field et al (2007)¹⁰². I was unable to access the full-text of this study so my observations come with that caveat. From the limited text available, this study is of a group of heavy drinkers, some of whom underwent a brief training exercise to direct their attention either towards or away from alcohol cues, and some who were not trained at all. The results appear to me to be that those who were trained to direct attention towards alcohol cues demonstrated an uplift in attentional bias, and those who were trained to direct attention away had a downturn in attentional bias: in other words – the training worked.

Cravings increased among those who were trained to be more attentive to alcohol. There was no impact on actual consumption for anyone regardless of whether they had received training of whatever type, or no training. All I can take away from this study is that a group of heavy drinkers who were trained to be more attentive to alcohol cues became more attentive to alcohol cues, but even with such bias, there was no impact on consumption. How that equates to the basis for a policy of holistic prohibition of alcohol advertising escapes me.

Paragraph 3.29

“A recent literature review on the impact of alcohol marketing on higher-risk drinkers and those in recovery found that this can act as a ‘trigger’ or incentive to drink for those in treatment or recovery from alcohol dependence”

Analysis of 3.29

The “recent literature review” referred to here is another paper by AFS, “*The effect of alcohol marketing on people with, or at risk of, an alcohol problem: A rapid literature review*” (2022), which is discussed above in relation to in my analysis of Paragraph 1.20. A separate hyperlink in Paragraph 3.28 (“...can contribute to relapse”) simply links to the same paper again.

Paragraph 3.29

“Those in recovery report a need to use strategies to avoid alcohol marketing and certain environments with high visibility of alcohol, including in-store.”

“Alcohol marketing can lead to negative emotions including loss, lack of belonging, anger, sadness, guilt and exclusion from the norm.”

Analysis of 3.29

The reference to strategies to avoid marketing is another link to RoR. This appears to me to be a reference to the following statement (at Page 52):

“Participants in several studies reported having to use strategies to steer clear of alcohol advertising, either through turning off media to try avoiding adverts or by actively recalling the negative aspects of alcohol use.”

This sentence in RoR is in turn linked to another AFS publication, the “rapid review” paper mentioned in 3.28 and in 1.20 above. There is a separate thread to be teased out here concerning the last part of the sentence viz “...including in store.” This seems to come from RoR as follows (at Page 54):

¹⁰² Field, M. et al. (2007). Experimental manipulation of attentional biases in heavy drinkers: do the effects generalise? *Psycho-pharmacology*, 192(4), 593-608.



“A Scottish qualitative study highlighted the high visibility of alcohol and advertising in shops as a risk to recovery, with people actively avoiding the alcohol aisles in bigger stores as well as small shops where alcohol is often located in full view behind the till.”

The reference to “in full view” here is demonstrative of the unfortunate language which often appears in literature focused on alcohol harm, as if handed down from a pedestal. What view of alcohol on a shelf in a shop should there be? A partial view? No view?

The study referred to here is Shortt et al (2017)¹⁰³. This study is a report on discussions held by persons attending a recovery café in central Scotland who took photographs of their daily experiences and, referring to these, discussed how the things they saw helped or hindered their recovery journey. These observations are described as “lived experience” (on which, see my conclusions at the end of this paper). If the environment had visible alcohol then that was considered a risk, whereas an environment which did not have alcohol was considered therapeutic to the person. These seem to me to be observations *relative to those individuals*; but that is not evidence on which to base the introduction of a dark market and shutter alcohol displays. That, for me, is clearly disproportionate, and particularly so when the Scottish Government note (at **3.27**) that the number of adults who are dependent on alcohol is 1% of the total population. In addition, it seems to me that the Scottish Government ought to explore more fully whether living in an environment where alcohol exists, and learning strategies to manage that, is a recognised and appropriate part of a recovery journey.

The second sentence in this paragraph, highlighting “negative emotions”, is just a further link to the AFS “rapid review” paper again.

Paragraph 3.31

“These results are consistent with research undertaken by Scottish Families Affected by Alcohol and Drugs, and the Alcohol Health Alliance which found that people in recovery experience persistent and ubiquitous alcohol marketing messages in their daily lives.”

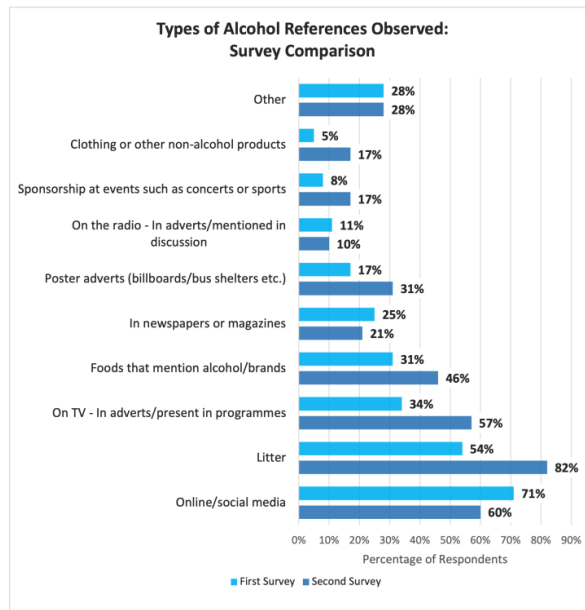
Analysis of 3.31

The research referred to by SFAD¹⁰⁴ is the “Alcohol Everywhere” Report (2022)¹⁰⁵. This paper looks at an extremely small number (35 and 28) of survey responses about the presence of alcohol. Two studies were carried out, one in January 2021, and a follow-up in September/October 2021. It should be noted that during these periods restrictions relating to Coronavirus were in place. There are some interesting observations to be drawn, for example in relation to the following graph* which looks at the types of alcohol visibility.

¹⁰³ Shortt NK, Rhynas SJ, Holloway A. Place and recovery from alcohol dependence: A journey through photovoice. Health Place. 2017 Sep;47:147-155.

¹⁰⁴ <https://www.sfad.org.uk>

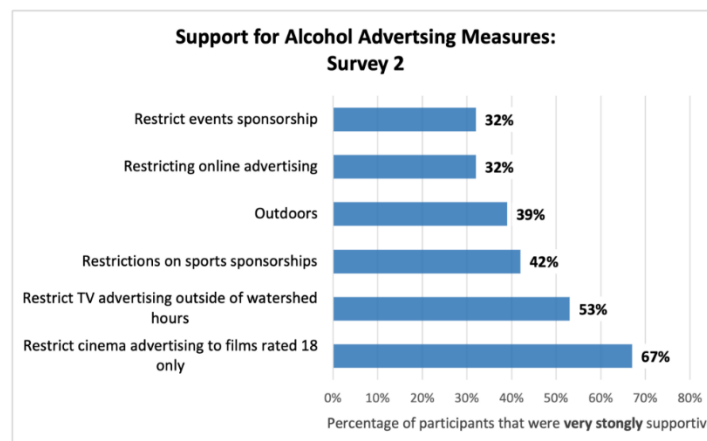
¹⁰⁵ <https://www.sfad.org.uk/content/uploads/2022/09/Alcohol-Everywhere-Report-2022.pdf>



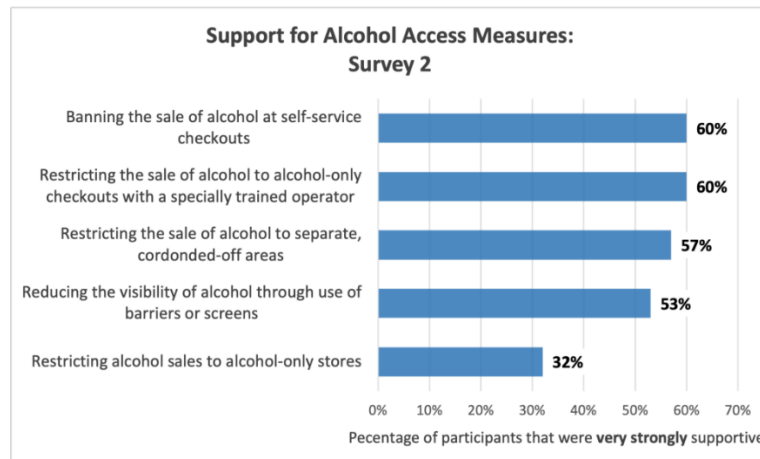
*Fig 9 – Source: “Alcohol Everywhere”, Scottish Families Alcohol Action Group (2022): Page 7.

The study presents a number of comments from participants containing anecdotal evidence about their awareness of alcohol when they, or someone they live with, has a dependency on alcohol. This heightened awareness is, in my analysis, all too understandable. It makes sense for someone in one of these categories to have a more acute response to the presence of alcohol in society. The responses are somewhat of a snapshot because they relate to the “lockdown” period, but nonetheless I think the general point that respondents raise remains a view validly held by them.

The study authors were also aware that the Scottish Government was going to publish a consultation on alcohol advertising and ask questions around this. It is to be accepted that this is a very small sample, and a sample group with a focus on persons with, or living with, someone who has dependency. Nevertheless, I have extracted two tables to present the findings for balance.



*Fig 10 – Source: “Alcohol Everywhere”, Scottish Families Alcohol Action Group (2022): Page 15



*Fig 11 – Source: “Alcohol Everywhere”, Scottish Families Alcohol Action Group (2022): Page 16

The next piece of evidence used to fortify **3.30** is an Alcohol Health Alliance report, viz “*No escape: How alcohol advertising preys on children and vulnerable people*” (November 2021)¹⁰⁶. In this paper they make a number of statements which relate to the impact of alcohol marketing/advertising on the recovery community such as this (at Page 19):

“A recent study into the role the environment plays in recovery from alcohol dependence has confirmed that the persistent availability and marketing of alcohol was one of the largest risks.”

This recent study referred to is Shortt (2017), which I have already discussed above at **3.29**.

Paragraph 3.33

“Although there is limited research on the impact alcohol marketing has on adults in the general population, it is likely that alcohol marketing also makes alcohol more attractive to adults generally and influences consumption.”

Analysis of 3.33

The concession here as to the lack of evidence is worth noting, but even so, an assumption is made. There is no link or study cited to support this assumption. Absent from this statement is any suggestion that alcohol marketing leads to, or has any association with, *harmful* consumption in the adult population.

Paragraph 3.34

“A survey in Ireland found that 9 out of 10 adults recalled seeing alcohol marketing in the prior month, and at least half recalled seeing alcohol marketing approximately 2-3 times a day.”

Analysis of 3.34

The source of survey referred to here is, once again, RoR. The study is actually Critchlow et al (2021)¹⁰⁷. This study is about how people’s perceptions of seeing alcohol marketing was changed following new restrictions in Ireland, and the impact of Covid-19. The study, fairly, acknowledges that the recall of some participants was in error:

“For example, around half of participants reported seeing advertising on public transport at wave two, despite this activity being prohibited.”

¹⁰⁶ <https://ahauk.org/wp-content/uploads/2021/11/MarketingReport-FINAL.pdf>

¹⁰⁷ Critchlow, N. & Moodie, C. (2021). Awareness of alcohol marketing one year after initial implementation of Ireland’s Public Health (Alcohol) Act and during the COVID-19 pandemic. *Journal of Public Health*, fdab353.



The authors say the following:

“While the repeat cross-sectional design meant no attrition, it cannot show a causal link between marketing and consumption.”

So, whilst the study is offered as an example of what is argued is “ubiquitous” alcohol advertising which can be viewed by adults, it does not hold itself out to say there is a causal link with consumption; it admits that some people said they were seeing advertising when there was none, and nor can it therefore be cited as proof that advertising leads to harmful consumption.

Paragraph 3.35

“Marketing contributes towards sustaining social norms around alcohol, that this is positive, normal and desirable. We know that social norms are amongst the most powerful drivers of behaviour, including drinking. Studies indicate that the way alcohol is portrayed within alcohol adverts acts as a cue for drinking and influences consumption.”

Analysis of 3.35

The quote above is a further link to RoR although again without a specific direction to what part of the paper is relied upon. In RoR, AFS signpost clandestine motives to industry (at Page 8):

“...regulation must be guided by the public interest, avoiding actual, potential or perceived conflicts of interest and undue interference from industry actors.”

In relation to “social norms”, RoR has a number of points to make, including statements such as (at Page 77):

“Preventing alcohol companies from sponsoring sports events and teams would, therefore, help to reduce exposure to alcohol marketing on television. It would also reduce the ability of alcohol companies to develop and reinforce social norms about alcohol use by challenging the ubiquity of alcohol marketing.”

The reality, in my own view, is that alcohol is normal, and is desirable, and has been a part of the human condition since society began. That is not to say it should not be regulated; but de-normalising it is dogmatic and disproportionate, and therefore the Scottish Government should reflect very carefully on any view it has reached that it has such a mandate. The vast majority of the population in Scotland consume alcohol responsibly without harm to themselves or others. Alcohol consumption is a social norm: to claim otherwise is to deny reality. Proponents of the view that alcohol has to be de-normalised and de-personalised in order to impact harms are ideologues. There are those, of course, who wish that alcohol was not a social norm, and hold the view that it is not inherently normal, and I accept that those views will be firmly held – but there are also those who argue (in my view erroneously) that it has been made to *appear* normal when it is abnormal, by the seen and unseen hand of the alcohol industry in pursuit of profits.

In relation to studies and “cues” referenced in Paragraph 3.34, given the document provides no specific link to what part of RoR it seeks to rely on to justify that claim, I can only guess that it refers to the already referenced studies which are discussed elsewhere, such as the ones I discuss where this claim is made at Paragraphs 1.21, 3.16 or 3.27.

Paragraph 3.36

“Although alcohol companies state that they use marketing techniques to retain consumers and inspire switching between brands and products, research demonstrates that campaigns also recruit new drinkers and increase overall alcohol consumption.”

Analysis of 3.36



The “research” the above statement references is a report called “They’ll Drink Bucket Loads of the Stuff” by Professor Gerard Hastings on behalf of what was then called the Alcohol Education Research Council, which is now under the umbrella of Alcohol Change, itself a merger of Alcohol Concern and Alcohol Research UK, and was published April 2010¹⁰⁸.

Firstly, the language in paragraph **3.36** is designed to nudge the reader to infer that the “claims” by industry are of lesser evidential value than the “research” presented in the 2010 paper. Yet none of the counterfactual materials and research which are cited by industry (and others) are offered or explored. I have put forward a significant number of academic papers which argue that brand-switching is the key outcome of marketing, and I dissect this general aspect of debate with regard to the “plausibility” Bradford-Hill criterion in my critique of Paragraph **3.11** above.

I would also point to the reservations I suggest as to the use of “internal alcohol industry documents” as a basis to underscore policy conclusions in my analysis of Paragraph **3.23** where similar emotive language is leaned upon, as with the title of this 2010 paper. The 2010 paper is an analysis of papers released to the UK House of Commons Health Select Committee in 2009.

The wording of Paragraph **3.36** says that the 2010 paper is evidence of two key statements:

1. **That marketing increases overall consumption:** we know that this is simply not true in the context of Scotland, and I have analysed this at length earlier in this paper (see my comments under **3.11** and “plausibility” and elsewhere). The 2010 paper is, to my reading, bereft of any material or factual data to support the view that marketing increases general consumption. There is only one small section (at Page 21) which discusses this, and which suggests that the title of an internal industry document is evidence that marketing increases general consumption. The title in question is a Smirnoff Vodka document which was called “*Introducing next generation growth for vodka in the On-Trade*”. Leaving aside the evidential value of relying on the title of an internal document to make such a significant claim, the author appears to me have equated market growth with general consumption increase; two entirely separate paradigms.
2. **That marketing campaigns recruit new drinkers:** here the 2010 paper references a 2007 PR Campaign Brief for Lambrini which said there was a need to “*consolidate appeal amongst the younger, lower socio-economic females that we have always considered our core audience*”. The impression again is that the aim here is to somehow “catch out” the industry by reference to internal documents in which it is clear they are driven to try to sell their product. So, when a brand such as Lambrini discusses the fact that it wishes to ensure its product remains attractive to the target market, and this includes new entrants to that market, this is positioned as encouraging people to drink *per se*. In fact, the reference to “younger” drinkers refers to adults of legal drinking age. “Recruiting new drinkers” is a phrase interpreted to infer a malign intent; i.e. nefariously converting non-drinkers – whereas in fact the language is simply representative of renewing marketing for the existing “core audience” for that particular brand. In other words, the marketing is static – it is designed for the established audience and that needs to be replenished as individuals enter or leave. New entrants to that demographic are not being enticed into that cohort by clandestine means: they enter the demographic because they age. Once in the demographic, they become part of the target market. They will then leave that market as they get older. Conspicuous by its absence, on the other hand, is any recognition of “new drinker” in the example of a person who is a new drinker *to a particular brand*.

The statement in **3.36** also completely ignores the contrary empirical evidence summarised in the CREDOS report as well as the multitude of studies such as Wilcox et al (2015) which I highlighted in relation to “Plausibility” under **3.11** above.

Paragraph 3.37

¹⁰⁸ https://s3.eu-west-2.amazonaws.com/files.alcoholchange.org.uk/documents/AERC_FinalReport_0071.pdf.



“It is very unlikely that alcohol marketing only influences adults on switching between brands and that this does not influence increased consumption of alcohol. It can have a number of impacts on behaviour including encouraging someone to try an alcoholic product for the first time, encouraging someone to buy more or more frequently, capturing market share from competitors or enticing previous consumers to return.”

Analysis of 3.37

The “very unlikely” statement in this paragraph is simply another way of saying the same thing which was said in Paragraph 3.36. This is a further link here, again with no context, to RoR. Where RoR refers to brand switching vs recruiting new drinkers/general consumption it, in turn, refers back to the same 2010 report which is referred to in 3.36. The only other reference given in RoR is to Hessari et al (2019) which I discuss at 3.16 and 3.23.

The level of duplication, and cyclical nature of evidence sources relied upon, is of itself significant in considering what weight to add to the evidential value of all of this, but especially so when one acknowledges that every source is one-sided and ignores a multitude of divergence.

The second part of the statement in 3.37, around “*a number of impacts on behaviour*”, is yet another reference to RoR, absent stipulation of the specific parts on which the statement is justified. However, it transpires the wording is a direct lift of the following text which appears in a discussion around the purpose of marketing activities *generally* (at Page 26):

“The ultimate goal of marketing is to ensure that a profitable relationship is maintained between people and both producers and retailers. This can include encouraging someone to try a product for the first time, encouraging someone to buy more or more frequently, capturing market share from competitors, or enticing previous consumers to return.”

So, in fact the “source evidence” for the latter statement in 3.37 is just the exact same wording which appears in RoR, which is not in fact about alcohol at all but is a general statement on marketing *per se*.



4. “What is the current regulatory system?”

Paragraph 4.3

“It is important to note that the Portman Group is funded by the alcohol industry.”

Analysis of 4.3

The particular line above drew my attention, not because it is erroneous, and not because it is in some way inappropriate to confirm how the Portman Group is funded, but because the same focus is not applied when discussing other “third party” organisations and this creates an impression that it is of more importance to be aware of how the Portman Group is funded. For example, AFS receive approximately 80% of their funding from the Scottish Government. SHAAP received over £1million of funding from the Scottish Government from 2018/19 to 2022/23¹⁰⁹ in order to have that organisation lobby the Scottish Government, and wider public, about alcohol policy. Meanwhile, the funding of the Advertising Standards Authority is acknowledged in the consultation (it is funded through a levy on industry) but this is not deemed “important to note”. A number of papers referred to in the consultation were funded by temperance organisations or organisations which agitate for restrictions around alcohol.

There is therefore an inconsistency in discussing source of funds. In my reading of this, one is left to divine that the need to make the statement about the Portman Group, coupled with the requirement to declare direct or indirect links to the alcohol industry (a requirement I have never seen in any other Scottish Government consultation document), is suggestive that the Scottish Government has listened closely to efforts by AFS and others to have the industry removed or devalued as valid contributors to policy, on the argument that they are conflicted.

In Vos et al (2020)¹¹⁰, an analysis was undertaken as to the outcome of studies on alcohol consumption funded by alcohol industry, to explore whether there was “sponsorship bias”. Their conclusion was:

“...only a small proportion of observational studies in meta-analyses, referred to by several international alcohol guidelines, are funded by the alcohol industry. Based on this selection of observational studies the association between moderate alcohol consumption and different health outcomes does not seem to be related to funding source.”

The efforts to deny industry a voice in policy outcomes confirms the dogmatic approach taken by agenda-led organisations; viewing industry as only ever a polluter, a causer of harm. If the Scottish Government were consulting on motor vehicle safety, and excluded the automotive industry, that would be an absurdity. The same is true with alcohol. Many alcohol producer businesses, and licensed trade business, find suggestions that they are only interested in profit to the exclusion of all else to be offensive. Many are also deeply upset that the consultation says not one single positive thing about the Scottish alcohol industry.

It is also worth noting that the alcohol industry is an extremely “broad church” and individual companies or trade bodies will often take different views on alcohol legislation. A good example of that is in relation to minimum unit pricing; whereupon it is often claimed that “the alcohol industry” was opposed to the policy, or that “the alcohol industry” delayed the policy through legal challenge. In fact, many significant names in the wider industry were in favour of it, including the Scottish Licensed Trade Association, and large producers including Tennents and Greene King.

All that being said, I do wish to note that the Scottish Government confirmed during the consultation period, to the Law Society of Scotland and to others, that there was no differential “weighting” to be apportioned to responses from the alcohol industry.

¹⁰⁹ <https://www.gov.scot/publications/foi-202300347130/>

¹¹⁰ Vos M, van Soest APM, van Wingerden T, Janse ML, Dijk RM, Brouwer RJ, de Koning I, Feskens EJM, Sierksma A. Exploring the Influence of Alcohol Industry Funding in Observational Studies on Moderate Alcohol Consumption and Health. *Adv Nutr.* 2020 Sep 1;11(5):1384-1391.



Paragraph 4.5

“We know that, despite the Codes, children and young people in Scotland see a high volume of alcohol marketing”

Analysis of 4.5

The Codes referred to here, are, for the avoidance of doubt, the advertising codes, which contain specific rules on alcohol advertising. The phrase above is justified with a link to Critchlow et al (2019). This is the same survey which is leaned on in Paragraph 3.2, so my comments above on the survey may be adopted again here.

Paragraph 4.6

“When young people are asked whether alcohol adverts are appealing they often answer that these are, despite self-regulatory bodies decisions that these are not appealing. In theory, within this rule, a marketing campaign can appeal to children, but as long as it also appeals to adults it is permitted this is a high threshold to meet. It suggests that adverts are permitted to appeal to children and young people, so long as they don’t appeal more to them than they do to over 18’s”

Analysis of 4.6

The first part of this sentence (“*When young people are asked...*”) refers to a report by the National Youth Council of Ireland called “Get ‘em Young: Mapping Young People’s Exposure to Alcohol Marketing in Ireland”¹¹¹. This document is an example of “lived experience” material and dates from June 2009. I have a number of concerns about this 2009 report being relied upon by the Scottish Government.

- It is a focus group discussion which had just 16 participants in which, by admission, the “top ten” most appealing marketing practices are examined having given the cohort a brief to discover and prioritise the selection of practices which were thought to be popular amongst young people. The outcomes of the workshop are therefore not a reflection of reality: they are curated. It is the tail wagging the dog.
- Despite following that brief, only six out of every ten practices were thought to appeal to young people.
- Three of the participants were of legal drinking age; in other words, they were not children or young people – they were adults.
- Much of the concern around the practices noted was a focus on price promotions: therefore a strange comparator to rely on, given the existence in Scotland of (a) minimum pricing since 2015 and (b) bans on irresponsible promotional activity in licensed premises since 2009.

The equivocation of this Irish evidence is deeply unsound, not merely because of the evidential base on which it is set, but because it is against a wholly different regulatory background. Ireland in 2007 is not Scotland in 2023.

The remainder of the sentence highlighted from 4.6 is, to my mind, far-reaching speculation which is not only unwarranted, but simply does hold true against the framework in a Scottish context in 2023.

Paragraph 4.7

“...marketing which is aimed at adults will often appeal to those under 18.”

Analysis of 4.7

¹¹¹ <https://www.youth.ie/documents/get-em-young/>



This statement is based on Boniface et al (2022) which I deal with at Paragraph 3.8 above, as it was also relied upon there.

5. “Proposed Restrictions”

Paragraph 5.3

“We know that it is the cumulative nature of alcohol marketing that negatively influences children and young people rather than individual channels or methods.”

Analysis of 5.3

This statement is a reference to Gordon et al (2010) which is also relied upon at 3.12 and therefore my analysis above applies here too.

Paragraph 5.4

“Evidence from other European countries also sets out that more comprehensive restrictions have proved to be more effective and easier to implement.”

Analysis of 5.4

The ease at which prohibitions may be implemented is not the test as to whether they should be replicated in Scotland. It is perhaps a truism to acknowledge that a blanket ban on anything is less complex than a ban with nuance; but that is neither here nor there, as much as I firmly believe in good law being clear law. The real test is surely whether the ban is based on evidence which justifies it.

The evidence from other countries referred to here is in fact a further paper prepared for AFS, called “Alcohol Marketing Restrictions: Learning from International Implementation” (May 2022)¹¹² which was commissioned in order to help them make recommendations to the Scottish Government about advertising restrictions.

By “effective”, what the Scottish Government is talking about here is effective in tackling alcohol harm. The Scottish Government were directly involved in this report by mutually agreeing which countries to focus on: Estonia, Finland, France, Ireland, Lithuania, Norway, and Sweden. I shall examine all of them.

- **Estonia**

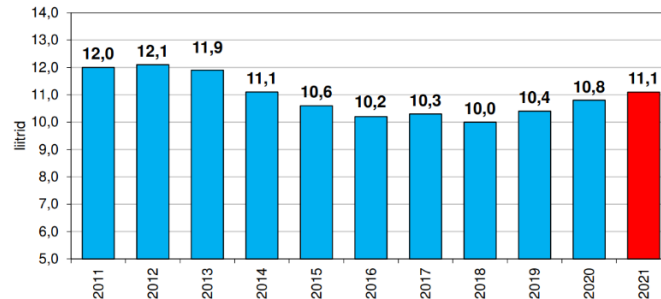
Initial, partial restrictions on alcohol advertising were implemented in 2008 and appear to my reading to be akin to the advertising Codes that we have in the UK. A new Act was passed in 2017 introducing significant tougher restrictions on advertising as well as structural separation of alcohol displays in shops, (although this was relaxed slightly to allow alcohol to be displayed behind a counter in small shops in 2020). However, the rates of alcohol consumption in Estonia have risen since the implementation of the advertising ban, from 10 litres in 2018, to 11.1 litres in 2021, as the following table confirms:

¹¹² <https://www.alcohol-focus-scotland.org.uk/media/440166/alcohol-marketing-restrictions-learning-from-international-implementation.pdf>

Alkoholi tarbimine Eestis

(liitrit täiskasvanud (15+) elaniku kohta aastas 100%-lises alkoholis)

Tarbimise kasvutempo on muutunud aeglasemaks:
2019. aastal +4,0%; 2020. aastal +3,8%; 2021. aastal +2,3%



*Fig 12 – Source: Republic of Estonia, Ministry of Social Affairs. "Survey: Alcohol consumption and harm increased in 2021" (June 2022)

Sadly, deaths have risen too. According to the Estonian Government, 695 people died of diseases directly caused by alcohol in 2021, the highest figure since 2008¹¹³.

- **Finland**

Advertising restrictions were introduced here in 2018 including a complete ban on all advertising for products above 22% ABV (with some exceptions) on all media. This is to be understood against a holistic ban on all alcohol advertising prior to 1995, where following Finland joining the EU some liberalisation occurred. This changed with the Alcohol Act in 2018 which also included a total ban on alcohol advertising in public places. However, this Act also made some other changes such as increasing the maximum ABV allowed in shops from 4.7% to 5.5%.

Since the law was introduced, impact on alcohol related deaths appears marginal having gone up modestly for three years before climbing back a little (2017: 1558; 2018: 1683; 2019: 1718; 2020: 1716; 2021:1646)¹¹⁴. Consumption rose slightly from 10.1 litres in 2018 to 10.65 litres in 2019¹¹⁵, and that should be considered against a wider prevailing downward trend from a high of 12.71 in 2007.

- **France**

The Loi Évin' was adopted back in 1991, a comprehensive ban on alcohol advertising. Over time, there has been a moderate liberalisation of this law. In 1994, billboard advertising was reintroduced. In 2005 some relaxation around origin of products was allowed to feature certain aspects. In 2009 online advertising was permitted and in 2016 a change was made to allow advertising of certain products linked to special region or heritage.

It is difficult to divine any impact on consumption trends either as a result of the changes in 1991, or the subsequent tweaks, looking at the following graph:

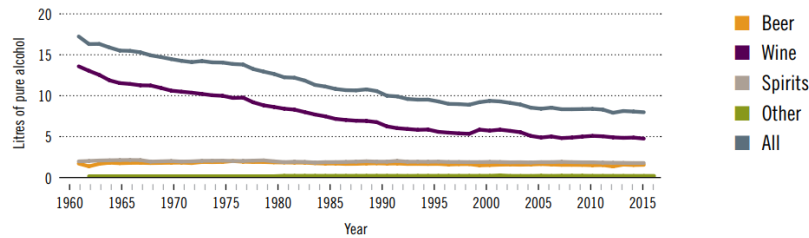
¹¹³ <https://www.sm.ee/en/news/survey-alcohol-consumption-and-harm-increased-2021>

¹¹⁴ <https://stat.fi/en/statistics/ksyvt> and see also "Finland sees more alcohol-related deaths since sales reform", YLE News, 30/11/22 - <https://yle.fi/a/74-20006651>

¹¹⁵ [https://www.who.int/data/gho/data/indicators/indicator-details/GHO/total-\(recorded-unrecorded\)-alcohol-per-capita-\(15-\)-consumption](https://www.who.int/data/gho/data/indicators/indicator-details/GHO/total-(recorded-unrecorded)-alcohol-per-capita-(15-)-consumption)

ALCOHOL CONSUMPTION: LEVELS AND PATTERNS

Recorded alcohol per capita (15+) consumption, 1961–2016



*Fig 13 – Source: WHO Global Status Report on Alcohol and Health 2018¹¹⁶

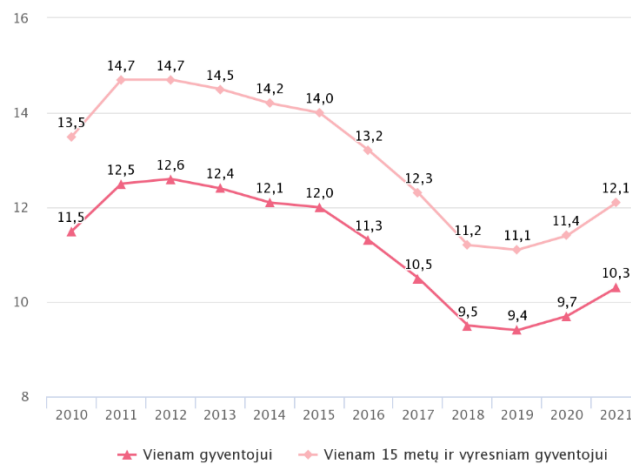
There is also little, if any, academic evidence or understanding on the effectiveness of the French model as to outcomes on consumption or harms, as acknowledged in Gallopel-Morvan (2022)¹¹⁷.

- **Ireland**

The Public Health (Alcohol) Act 2018 contained a number of measures akin to those discussed in the Scottish context. The most recent date for per capita consumption is also from 2019 and is 12.75 litres. As no further data is available, it is too soon to offer any analysis on whether the Irish laws have impacted consumption or harm, a point which the Scottish Government acknowledge.

- **Lithuania**

This country has had a significant rise and fall of intervention in alcohol advertising over the years, from a complete ban in 1995, relaxations in 1997, a u-turn on a complete ban in 2011, and then a full ban on advertising which was introduced in 2018. Per capita consumption of alcohol in Lithuania has risen since the 2018 ban:



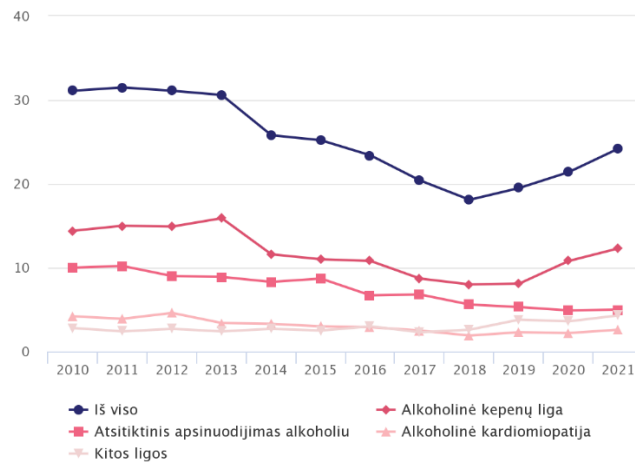
*Fig 14 – Source: Lithuanian Department of Statistics (2021)¹¹⁸

In addition, total deaths caused by alcohol have also risen since the 2018 ban was introduced:

¹¹⁶ <https://movendi.ngo/wp-content/uploads/2018/09/WHO-GSR-Alcohol-2018.pdf>

¹¹⁷ Karine Gallopel-Morvan, Raphael Andler, Viet Nguyen Thanh, and Nathan Critchlow (2022) Does the French Évin Law on Alcohol Advertising Content Reduce the Attractiveness of Alcohol for Young People? An Online Experimental Survey - Journal of Studies on Alcohol and Drugs 2022 83:2 , 276-286

¹¹⁸ <https://osp.stat.gov.lt/informaciniai-pranesimai?articleId=10070753>



*Fig 15 – Source: Lithuanian Department of Statistics (2021)¹¹⁹

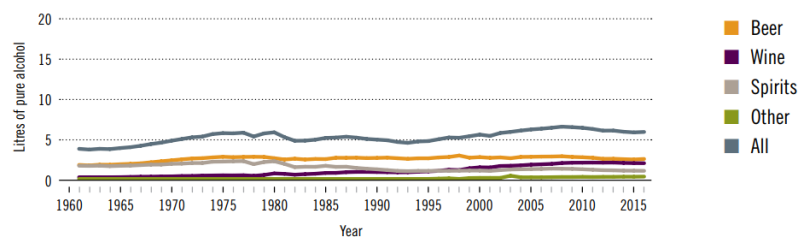
- **Norway**

The 2019 report notes that Norway was “the most extensive ban on alcohol advertising amongst our case study countries”. Legislation was originally introduced in 1975 prohibiting all advertising apart from products below 2.5% and was then tightened in 1997 to include “low-and-no” alcohol variants. In 2020 a modest exemption was introduced allowing TV adverts on foreign channels so long as it did not breach the rules of the country of origin.

Norway’s per capita consumption of alcohol is likely to be the lowest in Europe. In 1990, it sat at 5.1, rose to 6.6 in 2010, then dropped to 6 from 2015 to 2018, before rising to 7.4 in 2020. The following table indicates the relatively static nature of consumption before from before the 1975 ban and onwards. It is difficult to reach any conclusion about what impact, if any, an almost total ban on advertising has had on consumption levels.

ALCOHOL CONSUMPTION: LEVELS AND PATTERNS

Recorded alcohol per capita (15+) consumption, 1961–2016



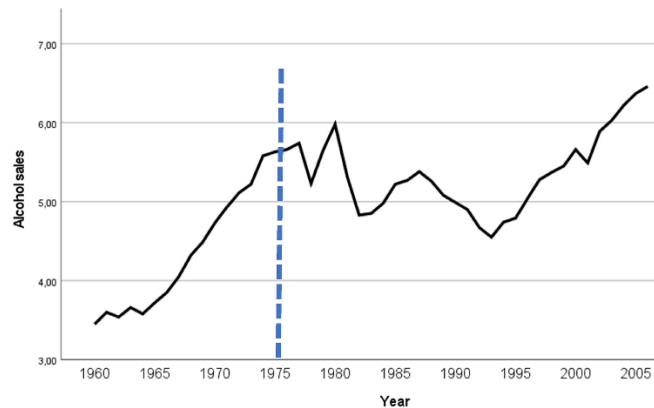
*Fig 16 – Source: WHO Global Status Report on Alcohol and Health 2018¹²⁰

The relationship was, however, explored in Rossow (2021)¹²¹. This study contains the following graph:

¹¹⁹ Ibid.

¹²⁰ See FN 96.

¹²¹ Rossow, Ingeborg (2021) “The alcohol advertising ban in Norway: Effects on recorded alcohol sales” Drug and Alcohol Review, Vol.40, Issue 7 1392-1395.



*Fig 17 – Source: Rossow (2021)

It appears to me at least, that this is suggestive of no association between advertising and alcohol sales. The study author, however describes this graph thus:

“From eyeball inspection of the time series of alcohol sales, it is not obvious that the ban was effective. However, the substantial variation in alcohol sales over time reflects that a number of other—and probably more important—factors impact sales and thus, inferences based solely on inspections of trends can be misleading.”

I find this analysis to be revealing, notwithstanding it is the author’s valiant attempt to have us disbelieve our own “eyeballs”. There are clearly a number of other societal factors at play causing the ups and downs shown in the graph, factors which are influencing consumption *other* than the ban on advertising.

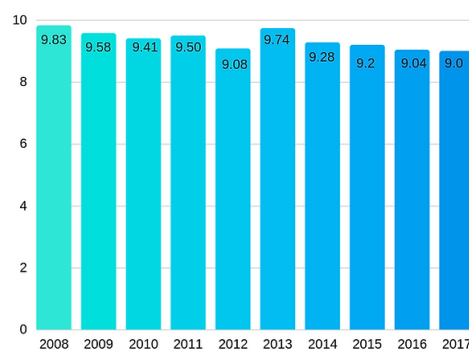
In terms of deaths, the number has fluctuated with no seeming link to rules on alcohol advertising or marketing. In 2008 the number was 392. This rose to an all-time high of 416 in 2010, dropped to 352 in 2015, dropped again to 311 in 2019, before rising to 387 in 2020 and 371 in 2021.

- **Sweden**

Sweden has a general ban on alcohol advertising for product above 2.25% ABV which goes back to 1978, with additional restrictions introduced in 2010. Sweden is not a helpful comparator in terms of the rules placed on trade because the retail sector there, for products above 3.5%, is nationalised and alcohol is only sold by the Government itself, under the *Systembolaget*.

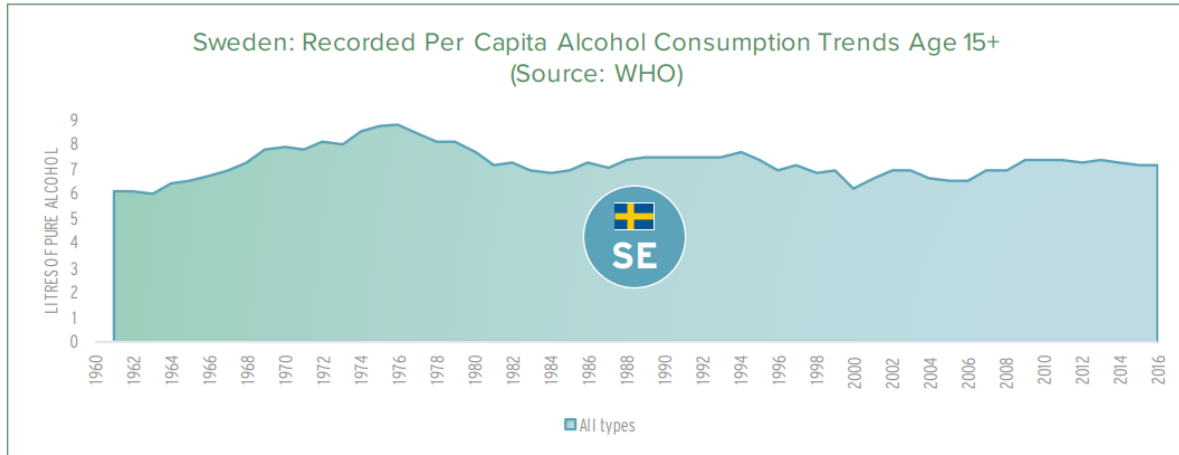
Sweden per capita consumption has exhibited a modest drop from 2008 to 2017 as the following graph shows:

Per Capita (15+) alcohol consumption in Sweden



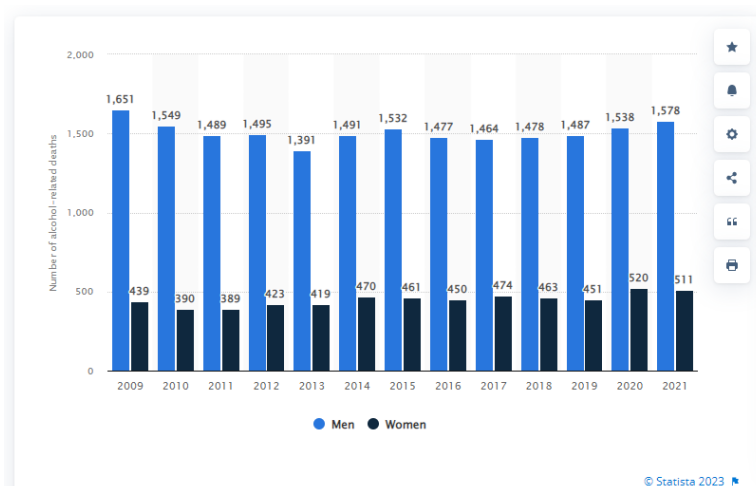
*Fig 18 - Source: www.nordicalcohol.org/sweden-consumption-trends

This should be set against the wider consumption trend in Sweden going back to the early 1960s which has remained broadly flat.



*Fig 19 – Source: WHO, as captured in “The Missing Link: Per Capita Alcohol Consumption and Alcohol-related Harm” (January 2022)¹²²

It is difficult to get any real sense of how the advertising ban in Sweden has impacted on deaths caused by alcohol, if at all. The number of deaths across 2009 to 2021 has, again, remained broadly the same:



*Fig 20 – Source: Statista¹²³

Lastly, I would also seek to highlight the following statement from the May 2022 paper referred to at 5.4:

“What impact, if known, have the restrictions had on levels of exposure to alcohol marketing? The most notable finding here is the lack of research evidence.”

In other words, there is actually no demonstrable evidence that any of the advertising or marketing bans in the seven countries resulted in a causal or even correlative link to reduction in either consumption or reduction in alcohol harm, with the only exception being the peculiar claim made in Rossow (2021) regarding the Norwegian example, which I discuss above. In contrast, the May 2022 report has this to say about France:

“For example, despite initial implementation in 1991, very few studies have evaluated the effectiveness of the Loi Évin restrictions in France. One such study concluded that compared

¹²² https://spirits.eu/upload/files/publications/Swedish_Report_January2022.pdf.

¹²³ <https://www.statista.com/statistics/529494/sweden-number-of-alcohol-related-deaths-by-gender/>



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to social factors, policy measures did not appear to have an impact on reducing alcohol consumption.”

The study referred to here is Cogordan et al (2000)¹²⁴.

¹²⁴ Cogordan C., Kreft-Jais C., Guillemont J. (2014) Effects of alcoholic beverage control policies and contextual factors on alcohol consumption and its related harms in France from 1960 to 2000, *Subst Use Misuse*; 49, pp. 1633–45.



6. “Sport and events sponsorship”

Paragraph 6.5

“A recent University of Stirling study analysed alcohol references within four broadcast matches, hosted in France, Ireland and Scotland, at the 2020 rugby Six Nations Championship. This found that alcohol marketing was most frequent in the match played in Scotland, with an average of approximately five references per broadcast minute, one every 12 seconds. This contrasted with an average of one reference per broadcast minute in France, a country with comprehensive restrictions on alcohol marketing.”

Analysis of 6.5

The study referred to here was commissioned by SHAAP and the Institute of Alcohol Studies and Alcohol Action Ireland¹²⁵. It is a frequency analysis counting how many times an alcoholic brand appears on the TV screen during the rugby matches mentioned and discovers that the frequency was greater in Scotland. It is hardly surprising that the prevalence of the lead sponsor brand (Guinness) was high, given it is a part of the pitch, hoarding and goalposts. The study tells us nothing about consumption or harm, but the inference drawn is that the presence of an alcohol brand in a sport setting is negative; this positioning is part of the wider narrative around de-normalising alcohol. This inference is put forward in the following paragraphs.

Paragraph 6.7

“A 2019 survey found that 69% of young people surveyed in Scotland had seen alcohol sports or events sponsorship in the prior month.”

“Research with ten and eleven year olds in the UK found that almost half of the Scottish children surveyed (47%) associated the Scottish national team with the beer brand sponsor at that time. Only 19% of the English children made the same association.”

Analysis of 6.7

The 2019 survey referred to is taken from the Youth Alcohol Policy Survey and a presentation entitled “Awareness of alcohol marketing among young adolescents in Scotland”¹²⁶. This was a survey of 424 11 to 19-year-olds in Scotland from 2017 and then a second survey of 418 in 2019. It found that 90% of those asked in 2017 and 93% of those asked in 2019 had seen at least one advert for an alcoholic product in the last month; across all forms and manners of possible media from TV, social media, billboards, magazines, radio, cinema, “influencer” content, marketing of sports/events and so on. The survey says that “current-drinkers” consuming at “higher risk” (what constitutes higher risk was not clear to me) were 3.2 times “more likely” to recall seeing at least one instance of alcohol marketing vs all other groups such as “never-drinkers” (never touched alcohol) or “non-drinkers” (tried it but did not currently drink). The reference to 3.2 is an Adjusted Odds Ratio, not a Relative Risk – with a confidence interval which starts from 1.09. In my understanding, according to the wider academic literature this is only marginally statistically significant because it is so close to the “no-association” integer of 1.0.

Looking into the details, one discovers that 22.5% of the people surveyed were of legal drinking age, which I consider to an important aspect of the evidential basis: it is not made clear how many of the “current drinkers” were simply adults. The inclusion of adults of legal drinking age means, for me, the reliance on this as evidence that something must be done to protect children and young people from advertising is unsound. In any event, the ability to recall one advert for alcohol within the last month under any circumstance, context or setting is not, to my way of thinking, any evidence of an association between seeing the advert and the level of consumption and/or the level of harm, and certainly therefore no justification for prohibition.

¹²⁵ <https://shaap.org.uk/downloads/reports-and-briefings/364-alcohol-marketing-2021.html>

¹²⁶ <https://osf.io/dv349/>.



The link to the second study referred to in 6.7 (“*Research with ten and eleven-year-olds...*”) is not actually a link to the study but to a press release by AFS entitled “10 year olds more familiar with beer brands than biscuits”¹²⁷. There is no link to the study provided, but it is in fact a reference to a factsheet produced by AFS and others entitled, “Children’s recognition of Alcohol Branding”, previously relied upon at 3.5 above.

Paragraph 6.8

“People have particular connections with sports teams and players, as well as bands and celebrities. This allows alcohol brands to capitalise on and transfer these emotional connections to their brand, thereby increasing the alcohol brands visibility, appeal and influence.”

“This may create an appearance that the players or team are endorsing the products, children and young people or adults may then want to purchase these products in order to emulate, or be similar to, their sporting heroes.”

Analysis of 6.8

The first sentence above is based upon Purves et al (2017)¹²⁸. This was a frequency study of alcohol marketing references during eighteen matches in Euro 2016. The study is not, of itself, evidence to support the proposition in the statement. What the study does, is to frame its results against the precept that “*sponsorship creates positive emotional associations*”. That precept, is however, borrowed from other studies. One of these is Purves et al (2014)¹²⁹ which is a research paper produced by Alcohol Research UK and is focused on social media, not directly on sports or events sponsorship, although I accept there is some cross-over when discussing social media highlighting a brand’s association to a certain event. The following is a relevant extract to demonstrate this:

“Brands adopted a particular tone of voice, appealed to certain values, used humour and associated themselves with cultural references points such as sport or music which would be of intrinsic interest to users and would encourage them to feel comfortable in the brand’s presence. The online spaces created by alcohol brands could be seen to function as ‘glue’, bringing users together who shared similar interests or views. This creates social and emotional bonds between users which are beneficial in creating a feeling of belonging and acceptance. Although these conversations may not always revolve around alcohol consumption, they reflect brand values, revealing the subtlety and complexity of branding.”

The other study which Purves (2017) has regard to in relation to emotional connection is Leyshon et al (2013)¹³⁰, which is a position paper called “A losing bet? Alcohol and Gambling: investigating parallels and shared solutions”. However, on my reading of that paper I find no further evidential base that offers a causal link to consumption or harm as a result of sponsorship of sport/events; there is simply no empirical evidence offered to support the claims made. There is the following excerpt:

“Alcohol Concern Cymru has previously highlighted the role that sponsorships of sporting and cultural events by the alcohol industry play in the marketing mix, allowing companies to develop positive associations with their products and company, raise brand awareness, recruit new customers and increase the loyalty of existing customers.”

This type of statement is repeated consistently across the academic research I have reviewed for the purposes of this paper. But it is, in my assessment, a mere recognition of the function of marketing. Of course a brand wishes to have positive associations. Of course a brand wants to raise awareness.

¹²⁷ This led to coverage such as here: <https://www.bbc.co.uk/news/uk-scotland-31139528>.

¹²⁸ Purves, Richard & Critchlow, Nathan & Stead, Martine & Adams, Jean & Brown, Katherine. (2017). Alcohol marketing during the UEFA EURO 2016 football tournament: A frequency analysis. *International Journal of Environmental Research and Public Health*. 14, 704.

¹²⁹ Purves, R.I.; Stead, M.; Eadie, D. “What are you Meant to do When you See it Everywhere?” *Young People, Alcohol Packaging and Digital Media*; University of Stirling: Stirling, UK, 2014.

¹³⁰ Leyshon, M.; Sakhujia, R. *A Losing Bet? Alcohol and Gambling: Investigating Parallels and Shared Solutions*; Alcohol Concern Cymru & Royal College of Psychiatrists in Wales: Cardiff, UK, 2013.



That is the case, no doubt, for any product, although I concede there will be some products out there who do not market at all (one example which springs to mind is a particular tonic wine, popular in the west coast of Scotland). But such truisms are not evidence that the alcohol industry has ulterior motives, and not evidence that advertising leads to consumption or harm.

Turning to the second claim under Paragraph 6.8, that children or young people or adults may want to purchase alcohol brands to emulate sporting heroes, this is a reference to a report by Purves and Critchlow (2020)¹³¹, prepared for SHAAP. The case for “emulation” appears to be based on the following speculative statement:

“For example, by featuring players in social media adverts for alcohol brands, it appears that these players are endorsing the products. Purchasing or consuming the product then may become aspirational for the consumer in order to emulate, or be similar to, their sporting heroes.”

However, there is no specific evidence offered that alcohol consumption has occurred as a form of emulation of sporting heroes; the statement is merely hypothesis. It also does not accurately acknowledge the current restrictions concerning the use of sportspeople in alcohol adverts whether on social or traditional media.

Paragraph 6.10

“Alcohol sports sponsorship may also exclude or discourage those on a recovery journey for problematic drinking, from attending sporting events. People in recovery in Scotland have highlighted places where alcohol is sold and promoted as being risky environments”

Analysis of 6.10

The basis for the above statement is Shortt et al (2017) which is the same study relied upon in Paragraph 3.29 and therefore discussed above. The study makes no specific claims regarding sports or events settings at all.

Paragraph 6.11

“It is clear that alcohol sponsorship is contributing to the high volume of alcohol marketing in Scotland.”

Analysis of 6.11

There is no specific link or evidence offered in this sentence, notable by its absence. In what context is the volume of alcohol marketing “high”? What is the volume of alcohol marketing relating to sport in comparison to non-sport settings and contexts? What is the volume of alcohol marketing like in Scotland in comparison to countries with similar statutory regimes? These fundamentals are left unasked and therefore answered.

Paragraph 6.12 and 6.13

“...alternative sponsors can be found given adequate transition periods.”

“Examples from other countries with restrictions on alcohol sponsorship also demonstrate that sporting competitions remain financially viable”

Analysis of 6.12 and 6.13

¹³¹ Purves, R I & Critchlow, N (2020) “The extent, nature, and frequency of alcohol sport sponsorship in professional football and rugby union in Scotland” - <https://www.alcohol-focus-scotland.org.uk/media/439998/the-extent-nature-and-frequency-of-alcohol-sport-sponsorship.pdf>.



The concern I have here is that a conclusion has been reached without first taking evidence from the stakeholders in Scotland who would be affected. Comparing countries where alcohol advertising bans have existed for decades as demonstrative of viability without alcohol sponsors is false equivocation. This, coupled with statements such as “*We want children and young people, as well as those in recovery and the wider population, to be able to attend and enjoy sporting events without seeing alcohol adverts or promotion*” is demonstrative of a policy position being agreed prior to the public consultation: the debate has already moved on from whether banning sports sponsorship is necessary, proportionate or justified, to how quickly it can be achieved.

This is especially concerning when no effort has been made to analyse the impact such a ban would have; there is no Business Regulatory Impact Assessment (“BRIA”) at all. I recognise, of course, that sporting bodies will have their chance to present the impact on them as a part of the consultation; but that is not the point. The point is that the Scottish Government have made no effort to understand those issues prior to reaching a policy position with significant financial, cultural and social implications, or to consider what the competition implications might be, especially given the impact of the UK Internal Market legislation.

The fact that alcohol has a presence within a sport setting is not demonstrative of consumption, and not demonstrative of harm. No evidence is provided at all which hints at an association of sports sponsorship to actual harm from alcohol, far less any causal link. In addition, there is no recognition whatsoever of what steps taken either by alcohol brands or by sporting bodies and clubs in relation to carrying messages around responsible consumption.

That being so, the position taken by the Scottish Government in these sections may be described as ideological; they originate from the view espoused by others that harm is the sole derivative of alcohol, a view manifestly partial.

Paragraph 6.17

“The intention would be that this would create a more family friendly environment at both sporting and cultural events...”

Analysis of 6.17

It is of interest to me that the presence of alcohol advertising, as opposed to alcohol consumption, is considered not to be a “family friendly environment”; again here we have a dogmatic position that advertising of alcohol is of itself unfriendly to families (and by implication, children and young people). But how does such a statement sit against the proactive desire to promote family and children attendance within licensed premises where alcohol is actually served and consumed in a mixed environment? How is it good policy to say that, on the one hand, it is not desirable to have a child seeing an advert for beer at the side of a pitch, when in the same venue there will be places where the child is amongst adults who are consuming alcohol, and this is promoted under licensing policy?

Paragraph 6.20

“Although there is strong academic evidence looking at the nature and extent of sports sponsorship in Scotland, as well as the impact sports sponsorship has generally, the extent and impact of sponsorship of non-sporting events has not been researched.”

Analysis of 6.20

I consider the reference to “strong academic evidence” in relation to sports sponsorship in Scotland to be unfounded, if it is a suggestion that such evidence purports to demonstrate that sponsorship drives consumption and harms. Whilst there is certainly plenty of materials, which I have critiqued in the preceding paragraphs, which explore the presence of alcohol brands in sport settings, these tend to be frequency analyses or studies around visibility.



The latter part of the above sentence, “*the extent and impact of sponsorship of non-sporting events has not been researched*” is accurate, and it is therefore unsettling to see that, notwithstanding the dearth of any evidential base whatsoever, the Scottish Government proceeds to tell us that alcohol marketing in connection with no sporting events needs to be banned in any event.

Paragraph 6.21

“Despite the lack of research, it seems likely that children and young people, as well as those in recovery, see examples of alcohol marketing at non-sporting events, as a result of sponsorship arrangements.”

Analysis of 6.21

I consider it unjustified and disproportionate to seek to introduce a law that would have a significant deleterious impact on a large and important economic and social sector within Scottish society, namely the events and festival industry, on the test that “it seems likely”.

In addition, any research that were to be conducted at some future point around frequency or visibility would not cross the Rubicon into undisputed evidence that children or young people or vulnerable adults with an alcohol problem were being unduly influenced in a nefarious or even incidental manner to consume alcohol, or that any correlative or causal link to actual alcohol harm can be established.

Paragraph 6.23

“There is some academic evidence finding that those on a recovery journey for problematic drinking find places where alcohol is sold and promoted to be risky environments where they would rather avoid.”

Analysis of 6.23

The reference to “academic evidence” in this context is given in lieu of the absence of any actual specific studies or evidence around alcohol and events sponsorship. The “academic evidence” referred to in the above statement is another reference to Shortt at al (2017), the same paper which is leaned on at 3.29 and 6.10, and therefore my earlier comments about that study apply here too.

Paragraph 6.24

“Due to the likely impact this has, it is therefore also worth considering alcohol sponsorship of non-sporting events and whether this should be an area of potential restriction.”

Analysis of 6.24

The above statement is not fortified by any fresh evidence, therefore I find the use of the phrase “due to the likely impact...” to be unjustified. The “likelihood” has not, in relation to events, been in any meaningful sense established – or even hinted at. The tone of this language is akin to 6.21. Likelihood is not probability, far less causality.

Paragraph 6.25

“Given the need for a comprehensive approach for restriction to be effective, not considering non-sporting events may also provide a loophole in any regulation and a potential lucrative channel for alcohol marketing, if others were prohibited.”

Analysis of 6.25

The approach here is, for me, entirely wrong-headed. Instead of focusing on whether a significant prohibition is justified, the test has switched to become about whether the prohibition is more easy to



introduce the wider it is. My comments at 5.4 deal with this but in short it is an approach which dispenses with proportionality – and has therefore fallen into legal error.

Paragraph 6.26

“The Scottish Government acknowledge it would be a significant undertaking if alcohol sponsorship was prohibited for all events, without an adequate lead-in time. This takes account of the commercial nature of sponsorship contracts whereby these are made for a number of years. We welcome views on whether a lead-in time would be appropriate as well as how, and for how long, this might operate.

Analysis of 6.26

This wording is some of the most concerning for those in the events sector in Scotland. Rather than take any time to explore in any sense the impact a ban on alcohol event sponsorship might have on that sector, and on tourism, culture and so on, the language here presents the ban as a *fait-accomplie*, leaving the real question to be how soon it can be implemented. It also appears that the proposals are being considered in a silo, without regard to other Scottish Government strategies in relation to tourism, culture etc and I note that a consultation into the National Events Strategy Review was launched in March 2023 (although this consultation was at least accompanied by a partial BRIA, which was of course absent from the consultation on alcohol advertising)¹³².

¹³² <https://www.gov.scot/publications/national-events-strategy-review-consultation/>



7. “Outdoor and public spaces marketing”

Paragraph 7.1

“People in Scotland, including children and young people as well as those in recovery, are exposed to outdoor advertising indiscriminately as they travel around their neighbourhoods, villages, towns and cities. They do not make a conscious decision or a choice to see outdoor advertising.”

Analysis of 7.1

The language used by the Scottish Government here is redolent of the approach taken by AFS and others to see alcohol as an ever-harmful product which should not be seen at all in public places. The ethos here is that people need to be protected from advertising because they have not consented to see it but also because the advertising is harmful to them.

This type of language is clearly inspired by the relatively recent approach of those who agitate for restrictions basing their efforts not just on alleged public health concerns, but moving into the territory of human rights. Now, agenda-led organisations like AFS are not content to focus their efforts on health but seek to act as self-appointed advocates for the wider public to “protect their rights”. In this context, the right to be protected is the supposed right not to see an advert for alcohol, whereas other competing rights are not explored. This is positioned by AFS and others as a dichotomy: the “right to health” vs the commercial profits of alcohol producers.

This approach imputes a binary analysis where no consideration is given to the positive health implications that a successful alcohol and licensed trade industry represent through employment, joy, and social cohesion. It also ignores the vast body of academic studies which have found medical health benefits from moderate consumption of alcohol; such as Ronksley et al (2011)¹³³ (itself a meta-analysis of 47 other studies), Cui et al (2023)¹³⁴, Daya et al (2020)¹³⁵ Moreno-Llamas (2023)¹³⁶, Spaggiari (2020)¹³⁷, Zhang et al (2021)¹³⁸, Messaoudi et al (2014)¹³⁹, Roerecke et al (2014)¹⁴⁰, Kaprio et al (2019)¹⁴¹ and the recent Arafa et al (2023)¹⁴² to name a few.

Paragraph 7.3

“In 2019 more than six in 10 (63%) young people aged 11-19 surveyed in Scotland had seen alcohol billboard advertising.”

Analysis of 7.3

The survey referenced here is the same one as relied upon at 6.7. It can be no great surprise that adverts in public places have been seen by the public. But again I would argue that is not the test.

¹³³ Ronksley P E, Brien S E, Turner B J, Mukamal K J, Ghali W A. Association of alcohol consumption with selected cardiovascular disease outcomes: a systematic review and meta-analysis *BMJ* 2011; 342 :d671.

¹³⁴ Cui M, Li F, Gang X, Gao Y, Xiao X, Wang G, Liu Y, Wang G. Association of alcohol consumption with all-cause mortality, new-onset stroke, and coronary heart disease in patients with abnormal glucose metabolism-Findings from a 10-year follow-up of the REACTION study. *J Diabetes*. 2023 Apr;15(4):289-298.

¹³⁵ Daya NR, Rebholz CM, Appel LJ, Selvin E, Lazo M. Alcohol Consumption and Risk of Hospitalizations and Mortality in the Atherosclerosis Risk in Communities Study. *Alcohol Clin Exp Res*. 2020 Aug;44(8):1646-1657.

¹³⁶ Moreno-Llamas A, De la Cruz-Sánchez E. Moderate Beer Consumption Is Associated with Good Physical and Mental Health Status and Increased Social Support. *Nutrients*. 2023 Mar 21;15(6):1519.

¹³⁷ Spaggiari G, Cignarelli A, Sansone A, Baldi M, Santi D. To beer or not to beer: A meta-analysis of the effects of beer consumption on cardiovascular health. *PLoS One*. 2020 Jun 3;15(6):e0233619.

¹³⁸ Zhang, X., Liu, Y., Li, S. et al. Alcohol consumption and risk of cardiovascular disease, cancer and mortality: a prospective cohort study. *Nutr J* 20, 13 (2021).

¹³⁹ Messaoudi I, Pasala S, Grant K. Could moderate alcohol intake be recommended to improve vaccine responses? *Expert Rev Vaccines*. 2014 Jul;13(7):817-9.

¹⁴⁰ Roerecke M, Rehm J. Alcohol consumption, drinking patterns, and ischemic heart disease: a narrative review of meta-analyses and a systematic review and meta-analysis of the impact of heavy drinking occasions on risk for moderate drinkers. *BMC Med*. 2014 Oct 21;12:182.

¹⁴¹ Jaakko Kaprio, Antti Latvala, Richard Rose,42 - LONGITUDINAL PATTERNS OF ALCOHOL USE AND MORTALITY - A 40 YEAR FOLLOW-UP OF THE FINNISH TWIN COHORT, *European Neuropsychopharmacology*, Volume 29, Supplement 3, 2019, Page S804.

¹⁴² Ahmed Arafa, Rena Kashima, Yoshihiro Kokubo, Masayuki Teramoto, Yuki Sakai, Saya Nosaka, Haruna Kawachi, Keiko Shimamoto, Chisa Matsumoto, Qi Gao, Chisato Izumi. Alcohol consumption and the risk of heart failure: the Suita Study and meta-analysis of prospective cohort studies, *Environmental Health and Preventive Medicine*, 2023, Volume 28, Pages 26, Released on J-STAGE May 03, 2023.



The test is whether there is any evidence which confirms that seeing the billboards has influenced the person, whether child or adult, to consume alcohol, and whether harms result.

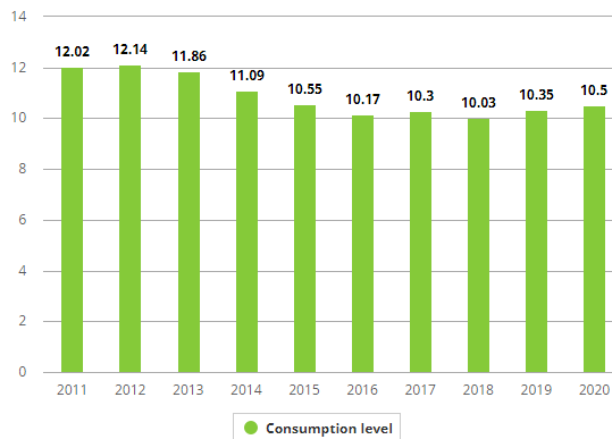
Paragraph 7.7

“Other European countries such as Estonia and Lithuania, go even further and include recreational facilities like museums, theatres, libraries within prohibitions on alcohol marketing”

Analysis of 7.7

In Estonia, significant restrictions on the advertising and marketing of alcohol were introduced in 2018¹⁴³. Alcohol consumption has since risen, year on year, as the following table shows:

Per Capita (15+) alcohol consumption in Estonia

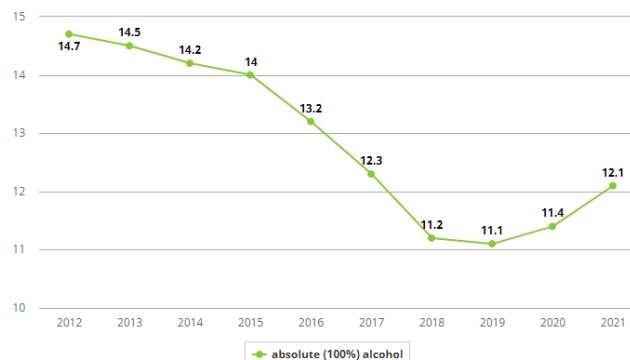


*Fig 21 – Source: <https://www.nordicalcohol.org/consumption-trends>

Per capita consumption in Estonia increased again in 2021, to 11.1¹⁴⁴.

Lithuania appears to present a similar journey. An almost complete ban on alcohol advertising and marketing was also introduced in 2018. Following this, alcohol consumption has risen as the table below shows:

Legal alcohol consumption per person aged 15 and older



*Fig 22 – Source: <https://www.nordicalcohol.org/lithuania-consumption>

¹⁴³ See Pärma K. Alcohol consumption and alcohol policy in Estonia 2000-2017 in the context of Baltic and Nordic countries. Drug Alcohol Rev. 2020 Nov;39(7):797-804 for an analysis of trends prior to the 2018 restrictions coming into effect.

¹⁴⁴ <https://www.sm.ee/en/news/survey-alcohol-consumption-and-harm-increased-2021>



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The fact that other European countries have introduced bans is not, of itself, justification for Scotland to follow suit. Where comparators are offered, such as the two countries selected here, there is no evidence that the restrictions actually resulted in lower consumptions or harms. The utility of these examples is therefore questionable.



8. “In-store alcohol marketing”

Paragraph 8.4

“Despite the current rules, alcohol is still legally promoted in-store through the placement of alcohol. Research shows that over half (58%) of children and young people surveyed in Scotland report seeing alcohol marketing in-store.”

Analysis of 8.4

The choice of “Despite” to open this sentence is odd. The rules are the rules; the implication is of course that the current rules are “wrong” and more must be done. Note here the term “placement of alcohol”. What we are talking about here is the existence of alcohol on a shelf in a shop; but described as “placement” the inference is that simple visibility of alcohol in a retail environment is being portrayed as problematic. The “research” referred to here is Gordon et al (2010) which is the same study relied upon at 3.12 and 5.3 and therefore my comments there, as to the reliability of the study as a basis for policy, apply here.

Paragraph 8.6

“People in recovery in Scotland have reported that retail-based environments are their single biggest challenge to recovery.”

Analysis of 8.6

This is a further reference to the Shortt et al (2017) study also relied upon at 3.29, 6.10, and 6.23. The question of whether it is proportionate to hide alcohol in shops in order to protect the recovery community is not explored either in the study, or in the Scottish Government’s consultation. I was not able to obtain data on what percentage of the population is considered to be dependent on alcohol, or in recovery from dependency. According to the Scottish Health Survey 2021¹⁴⁵, 14% of all adults are in the wider category of “*hazardous, harmful or possible alcohol dependence*”, but it should be noted that “hazardous” means at or just above the recommended weekly level of 14 units.

Paragraph 8.8

“Evidence shows that shop fronts are a source of marketing exposure for both children and young people as well as those in recovery.”

Analysis of 8.8

The evidence relied upon here is Chambers et al (2018)¹⁴⁶. In this study, 168 children aged from 11 to 13 were given wearable cameras to capture exposure to alcohol advertising. I was unable to access a copy of the full-text of this study, however, it is referred to RoR which says that: “*Shop fronts themselves were found to make up a significant proportion (16%) of their total exposure to alcohol marketing*” (at Page 45).

Licensed retailers exist. The fact that retail shops have frontages in which the products they sell may be visible is self-evident. This “exposure” to alcohol in those frontages is only of any relevance if you hold the view that seeing alcohol in a shop window will make children or young people attempt to buy it. That approach entirely ignores the regulatory framework which is in place to stop persons who are not of legal drinking age from actually obtaining it; and also entirely ignores the steps open to any person under the Licensing (Scotland) Act 2005 to take action against a retailer whom they believe to be selling to persons under-age, or, for that matter, to refuse service to persons exhibiting signs of being under the influence.

¹⁴⁵ <https://www.gov.scot/publications/scottish-health-survey-2021-volume-1-main-report/documents/>

¹⁴⁶ Chambers T, Pearson AL, Kawachi I, Stanley J, Smith M, Barr M, Mhurchu CN, Signal L. Children’s home and school neighbourhood exposure to alcohol marketing: Using wearable camera and GPS data to directly examine the link between retailer availability and visual exposure to marketing. Health Place. 2018 Nov;54:102-109.



Paragraph 8.10

“This [the ability to situate an alcohol display anywhere in a retail shop with licensing board approval] could be addressed by defining where an alcohol display area could be located, for example near the back of the shop away from entrances, exits or checkouts. Where alcohol is displayed behind the checkout this could be required to be in a closed cupboard, like tobacco products.”

Analysis of 8.10

I have discussed the practical implications of this, both for retailers and for licensing authorities, elsewhere¹⁴⁷.

Paragraph 8.12

“A UK study found that an end-of-aisle position for alcohol, including beer, wine and spirit products, increased sales by between 23.2% and 46.1%.”

Analysis of 8.12

The study referred to here is Nakamura et al (2014)¹⁴⁸. This is a study of a single shop in a city in England. The study authors note that the sales pattern they observed does not take account of possible substitutive impacts; in other words, where the alcohol selected from the aisle-end was in lieu of some other product. They also note that the “generalizability” of the findings may be limited given this was an assessment of a single shop.

What has also to be borne in mind, however, is that Scotland has a distinct licensing system and a retailer cannot move alcohol to an aisle-end without the permission of the licensing board. Many retailers will have aisle-ends as part of their agreed licence; I am certainly aware from my own practice that licences have been granted where no aisle-end is proposed. It would be a matter for local licensing boards to take a view on whether the use of aisle-ends is contradictory to the licensing objective of Protecting and Improving Public Health, and to do so based on probative evidence such as they may have before them.

Finally, I would observe that whether the sales of products are from one shelf or another does not amount to evidence that the sale itself is in some way irresponsible, or that the alcohol purchased was consumed irresponsibly.

Paragraph 8.16

“Restrictions on placement within Ireland came into force in November 2020, as such there is no evaluation yet of impact. However, we welcome views on if we should consider further restricting the placement and location of alcohol in stores.”

Analysis of 8.16

This approach follows earlier examples where the mere presence of restrictions in other countries, not the impact of those restrictions, is put forward as justification. This is equivalent to arguing that Scotland should *not* have restrictions by comparison to other countries who do not have restrictions. For me the question should be whether the proposed restrictions are based on probative evidence; and if so whether the extent of the restrictions is justified, and lastly; how those restrictions would impact on Scotland and Scottish society.

¹⁴⁷ McGowan, Stephen (2023) “Is it curtains for the off-trade?” Scottish Local Retailer, 6 March 2023 - <https://www.slрмаq.co.uk/is-it-curtains-for-the-off-trade/>

¹⁴⁸ Nakamura R, Pechey R, Suhrcke M, Jebb SA, Marteau TM. Sales impact of displaying alcoholic and non-alcoholic beverages in end-of-aisle locations: an observational study. Soc Sci Med. 2014 May;108(100):68-73.



9. “Brand-sharing and merchandise”

Paragraph 9.4

“Research suggests that alcohol branding has a powerful influence on young people, by using evocative imagery and cues, as well as appealing to adolescents on emotional levels and fulfilling their aspirations in terms of image and self-identity.”

Analysis of 9.4

The research referenced here is Harris et al (2015)¹⁴⁹. This study explores a phenomenon they describe as “consumer socialisation of children” which is about “how individuals develop as consumers in the marketplace”. The study argues that the “socialisation” of children to alcohol marketing impacts on drinking behaviour. However, I was unable to access the full-text of this article as the link is to an unfinished version which does not show the data output tables, so I would reserve any comment for that reason.

Paragraph 9.7

“A survey of over 3,000 young people aged 11-19 years old in the UK found that 17% reported owning alcohol branded merchandise. Those who owned branded merchandise were almost twice as likely to be susceptible to drinking compared with those who did not.”

Analysis of 9.7

The survey referred to here is Critchlow et al (2019)¹⁵⁰. This study, like a number of others, includes adults of legal drinking age in the general concept of what amounts to “young people”. I find this to be unhelpful in understanding the true picture. So, for example, this study says that “current drinkers” had a higher awareness of alcohol marketing but is unclear how many of that cohort are actually adults. When the data is analysed, it confirms that the number below drinking age who owned alcohol branded merchandise is actually 13.7%. Of the 18- and 19-year-olds who took part, 29.2% of them owned alcohol branded merchandise. Reverse causation is, or should be, a concern with this type of data. Are these 18- and 19-year-olds buying merchandise because they like the brand? And for those underage, what influence did family or friends have on that person owning branded merchandise in the first place?

The ORs established here are of interest. For example, the association between “medium marketing awareness” and higher risk consumption was 2.18; whereas for the cohort with “high marketing awareness” this was actually lower, at 1.43 – counterintuitive to the proposition that higher exposure leads to higher harm. Owning branded merchandise and higher risk consumption had an OR of 1.71.

In addition, the study authors are clear that they make no claim that a causal link is established.

Paragraph 9.8

“Research demonstrates that actively engaging with alcohol marketing, like owning alcohol-branded merchandise, has a stronger association with alcohol consumption, than seeing an alcohol advert does.”

Analysis of 9.8

This paragraph also refers to Critchlow et al (2019). See my comments above.

¹⁴⁹ Harris, F., Gordon, R., MacKintosh, A.M. and Hastings, G. (2015), Consumer Socialization and the Role of Branding in Hazardous Adolescent Drinking. *Psychology and Marketing*, 32: 1175-1190.

¹⁵⁰ Critchlow N, MacKintosh AM, Thomas C, et al (2019) “Awareness of alcohol marketing, ownership of alcohol branded merchandise, and the association with alcohol consumption, higher-risk drinking, and drinking susceptibility in adolescents and young adults: a cross-sectional survey in the UK” *BMJ Open* 2019; 9:e025297.



Paragraph 9.11

“The evidence on how NoLo products are consumed is not yet clear. In terms of whether these are consumed in addition to stronger alcoholic products at alternative occasions or settings, or as a direct substitute for alcoholic products. There is also no clear evidence on how children and young people may be consuming these products or the reasons for consumption. However, experiences from those in recovery have noted that NoLo can negatively impact their recovery.”

Analysis of 9.11

Given the accepted absence of clarity on whether NoLo has any impact on actual alcohol consumption or harm it is suggested that formulating policy without a probative evidence base is unwise, and it would be prudent to wait until an evidence base is established. Regarding the impact of those in recovery, this is a link to a blog where two individuals discuss their stories, called “Alcohol marketing and me: stories from those in recovery” (December 2021)¹⁵¹. There is a single reference to NoLo on the blog as follows:

“I blame zero alcohol drinks for at least two relapses when I hit the bottle again. At the end of the day an alcohol brand is alcohol, and it tells you to drink.”

I make no observation on the veracity of an individual’s own experiences. What I do wish to consider, is whether it is proportionate to rely on a single quote from a single individual to reach a conclusion upon which national policy is to be founded. It would, in my view, be balanced to ingather views of other individuals who may have an alternative experience of alcohol-free products, such as those who have found them to be a useful alternative to help reduce consumption, or to aid recovery¹⁵², or where the choice to consume such products is for some other reason such as enjoyment, taste, because they are driving and so on. In a February 2023 YouGov survey commissioned by the Portman Group, 21% of people said that their weekly consumption had decreased since trying NoLo products¹⁵³.

Paragraph 9.12

“There is no strong evidence base to indicate that the expansion of the NoLo market will reduce alcohol-related harm as this is often promoted as to be consumed in addition to alcohol rather than as a substitution (e.g. in the workplace).”

Analysis of 9.12

The “no strong evidence base” comment here is a reference to a report for the Institute of Alcohol Studies called “You can be a hybrid when it comes to drinking” (March 2022)¹⁵⁴, on organisation which lobbies for alcohol restriction and prohibition and was previously the UK Temperance Alliance. This report is based on interviews with 15 people about the 2018 Heineken 0.0 campaign “Now You Can” and the 2020 Seedlip campaign “Drink to the Future”. This study is demonstrably of little to no evidential value against the proposition that NoLo either does or does not have an impact on harm reductions as it does not offer any analysis of actual consumption or harm data. It says (at Page 38):

“It should be acknowledged that this is a small-scale, exploratory study designed to start to address a gap in current research and is unable to offer a comprehensive picture of NoLo marketing and consumer practices.”

¹⁵¹ <https://ahauk.org/alcohol-marketing-and-me-stories-from-those-in-recovery/>

¹⁵² For example, Nicholls argues that “those experimenting with short or longer-term abstinence may find NoLos a useful tool in starting and maintaining sobriety” – see Nicholls, E. (2021) Sober rebels or good consumer-citizens? Anti-consumption and the ‘enterprising self’ in early sobriety. *Sociology*, 55(4), 768-784; and also Nicholls, E. (2022) “There’s nothing classy about a drunk 40-year-old”: The role of ‘respectable’ femininity in the drinking biographies and sobriety stories of midlife women. In T. Thurnell-Read & L. Fenton (eds) *Alcohol, Age, Generation and the Life Course*. Palgrave Macmillan. Separately, one individual noted the use of NoLo as a part of her recovery journey, in Corfe, S., Hyde, R., & Shepherd, J. (2020). Alcohol-free and low-strength drinks: Understanding their role in reducing alcohol-related harms. Social Market Foundation / Alcohol Change (at Page 60).

¹⁵³ <https://www.portmangroup.org.uk/wp-content/uploads/2023/02/Portman-Group-Low-and-No-report-2022.pdf>

¹⁵⁴ <https://www.ias.org.uk/wp-content/uploads/2022/03/The-Marketing-and-Consumption-of-No-and-Low-Alcohol-Drinks-in-the-UK-March-2022.pdf>



This brings me to observe a contradiction in the policy approach taken by the Scottish Government. On the one hand, the lack of a strong evidence base regarding, say, alcohol sponsorships of events, seems to be no barrier to them proposing prohibitions. On the other hand, the lack of a strong evidence base regarding possible health benefits of NoLo is viewed as a reason *not* to discount prohibitions against that category of products. This type of contradiction does not appear arbitrary; it is suggestive that there is a single direction of travel, always towards prohibition.

A second study is referred to in **9.12**, which is Miller et al (2022)¹⁵⁵. This study explores whether NoLo is a “*harm minimisation tool or gateway drink*”. Far from being any sort of equivocal statement, the study actually concludes as follows:

“In this commentary, we explore the existing evidence on zero-alcohol beverages and their impact on drinking behaviours, concluding that a current paucity of knowledge makes developing evidence-based policy a challenge. As such, substantial research efforts are required to inform policies regulating the availability and marketing of zero-alcohol beverages.”

It seems to me, therefore, unwise to rely on a “paucity of knowledge” as basis for policy.

Paragraph 9.13

“NoLo products are often marketed for drinking in addition to one’s usual alcohol consumption patterns rather than instead of. This includes advertising showing the products being consumed at times and in settings where one would not normally drink alcohol e.g. at lunchtime, amongst pregnant woman, when driving or when doing yoga or DIY. If used in these alternative and usually non-alcohol related circumstances, use of NoLo products is unlikely to reduce overall consumption patterns, and thereby alcohol-related harms.”

Analysis of 9.13

The basis for the above statement is the same March 2022 study referred to in **9.12**. What is concerning here is the selective nature of the comment; ignoring the wider commentary within the article about the “substitution” effect in relation to NoLo products in settings more commonly associated with alcohol consumption. The following academic examples are given in support of the substitution paradigm, yet these are all overlooked in the Scottish Government document:

- Vasiljevic et al (2018a)¹⁵⁶ which suggests “*the increased availability of low/er strength alcohol products does have at least the potential to reduce overall levels of alcohol consumption*”.
- Rehm et al (2016)¹⁵⁷ which is offered as evidence that “*NoLo products may help consumers to have more alcohol-free nights, to stop drinking alcohol for the short or long-term or to drink more moderately / consume fewer units overall*”.
- Corfe et al (2020)¹⁵⁸ which “*acknowledge that the consumption of NoLo products could make a difference to health outcomes for individuals*”.
- Segal and Stockwell (2009)¹⁵⁹: “*the expansion of the NoLo market could be a positive development that brings public health benefits without jeopardising consumer satisfaction*”.
- Anderson et al (2021)¹⁶⁰: “*Two publications from only one jurisdiction (Great Britain) suggested that sales of no- and low-alcohol beers replaced rather than added to sales of higher strength beers.*”

¹⁵⁵ Miller, M., Pettigrew, S. and Wright, C.J.C. (2022), Zero-alcohol beverages: Harm-minimisation tool or gateway drink?. *Drug Alcohol Rev.*, 41: 546-549.

¹⁵⁶ Vasiljevic, M., Coulter, L., Pettigrew, M., & Marteau, T.M. (2018a). Marketing messages accompanying online selling of low/er and regular strength wine and beer products in the UK: A content analysis. *BMC Public Health*, 18(1), 147.

¹⁵⁷ Rehm, J., Lachenmeier, D.W., Llopis, E.J., Imtiaz, S., & Anderson, P. (2016). Evidence of reducing ethanol content in beverages to reduce harmful use of alcohol. *The Lancet Gastroenterology & Hepatology*, 1(1), 78-83.

¹⁵⁸ Corfe, S., Hyde, R., & Shepherd, J. (2020). Alcohol-free and low-strength drinks: Understanding their role in reducing alcohol-related harms. Social Market Foundation / Alcohol Change. <https://www.smf.co.uk/publications/no-low-alcohol-harms/>

¹⁵⁹ Segal, D.S., & Stockwell, T. (2009). Low alcohol alternatives: a promising strategy for reducing alcohol related harm. *International Journal of Drug Policy*, 20(2), 183-187.



Lastly, it seems to me that the rise in quality and choice of this sector has been driven by customer demand and that it is notable that there are now a number of NoLo brands which have no alcoholic alternative.

Paragraph 9.14

“Some evidence suggests that NoLo products have contributed to a reduction in the volume of alcohol purchased by British households in recent years. However, other UK survey research suggests that 50% of NoLo drinkers stated that drinking NoLos had not changed their overall alcohol consumption levels.”

Analysis of 9.14

The evidence referred to in the first sentence above is Anderson et al (2020)¹⁶¹. This is a study on shopping habits over 2015 – 2018 and concludes:

“While the purchase data find the introduction of new low and no alcohol beers and reformulation of existing beer products to contain less alcohol in Great Britain during 2015–2018, the volume of changes has been small and dominated by just two products. Nevertheless, small though they are, these changes are associated with reductions in the mean ABV of beer and reductions in household purchases of grams of alcohol within beer and in purchases of grams of alcohol as a whole, with reductions greater in higher alcohol-purchasing households than in lower alcohol-purchasing households.”

It would be helpful to understand what these outcomes might be for not just beer, but the various other NoLo products which are now available as it does appear to me, at least, that there is significant difference between 2018 and 2023 in relation to the range and quality of the NoLo products, and space given to such products on retail shelves. Where only a few years ago it may have been difficult to find non-alcoholic beers or wines in a supermarket, nowadays most supermarkets have a full range across one or two bays.

The second part of this paragraph is about a survey by the Social Market Foundation called “Alcohol-free and low-strength drinks: understanding their role in recurring alcohol-related harms (September 2020)¹⁶². It is for me obtuse to declare that evidence that people are drinking less alcohol is somehow devaluing to the precept that NoLo has a net positive effect. Here we have a study which says that 41% of people have cut back on their total alcohol intake by switching to NoLo. The 50% referred to are not drinking more alcohol, their consumption pattern is unchanged. So why choose not to say that 41% of people are drinking less due to the availability of NoLo?

Paragraph 9.15

“Evidence from Thailand suggests that alcohol companies strategically use similar branding in promotion of alcoholic and soft drinks meaning that young people associate brands with the ‘flagship’ alcoholic products regardless of what is being advertised.”

Analysis of 9.15

The reference here to “strategic use” is often referred to in the academic research as “alibi marketing” where it is argued that the non-alcoholic variant of a product is a Trojan Horse; a gateway to lure people towards the alcoholic variant. There is no evidence presented of any sort in Scotland or the UK that the consumption of NoLo deceives or entices people into drinking alcohol (whereas, there are a number of studies which present evidence of “substitution” – see 9.13). The Thai study,

¹⁶⁰ Anderson P, Kokole D, Llopis EJ. Production, Consumption, and Potential Public Health Impact of Low- and No-Alcohol Products: Results of a Scoping Review. *Nutrients*. 2021 Sep 10;13(9): 3153.

¹⁶¹ Anderson P, Jané Llopis E, O'Donnell A, et al. (2020) Impact of low and no alcohol beers on purchases of alcohol: interrupted time series analysis of British household shopping data, 2015–2018. *BMJ Open* 2020.

¹⁶² <https://www.smf.co.uk/publications/no-low-alcohol-harms/>



Kaewpramkusol et al (2019)¹⁶³ relates to focus group discussions with 72 students in Bangkok. I was unable to access the full-text so cannot offer a fuller analysis. The conclusion reached is:

“Brand advertising is a dynamic tool that affects young people's attitudes towards the advertised brands and alcohol use. Due to early exposure to the brands, brand sharing increases brand familiarity and, among other factors, potentially affects drinking attitudes and purchase intentions.”

The two key parts of this statement for me is that “brand sharing” is acknowledged as one of multiple other factors which only “potentially” affects drinking attitudes.

Paragraph 9.18

“Some other European countries explicitly include NoLo products within the scope of their alcohol marketing restrictions. For example, in Norway alcohol marketing is prohibited on all channels. This prohibition applies to alcoholic beverages over 2.5% alcohol by volume (ABV) but also to advertising of other products carrying the same brand or trademark as alcoholic beverages over 2.5% ABV.”

Analysis of 9.18

See my comments in relation to Norway in my analysis under 5.4.

Paragraph 9.19

“In France, comprehensive restrictions prohibit advertising of alcoholic products over 1.2% ABV.”

Analysis of 9.19

See my comments in relation to France in my analysis under 5.4.

Paragraph 9.20

“This demonstrates the need to carefully consider restricting these other distinctive and identifiable elements associated with the alcohol brand, in addition to restricting use of the alcohol brand name. Research has shown that young people in the UK are able to easily identify alcohol brands simply from these visual cues alone, even when the brand name itself has been covered up.”

Analysis of 9.20

The research referred to here is a link to RoR, not a separate study. The part of RoR I think this relates to is the 2015 paper “Children’s Recognition of Alcohol Branding”, which I have discussed at 3.5 and 6.7 above.

¹⁶³ Kaewpramkusol R, Senior K, Nanthamongkolchai S, Chenhall R. Brand advertising and brand sharing of alcoholic and non-alcoholic products, and the effects on young Thai people's attitudes towards alcohol use: A qualitative focus group study. Drug Alcohol Rev. 2019 Mar;38(3):284-293.



10. “Print advertising”

Paragraph 10.1

“Alcohol is advertised in newspapers and magazines within Scotland. A survey of over 3000 young people aged 11-19 years old in the UK found that 18.8% had seen an alcohol advert in newspapers or magazines in the last week. Four in ten had seen one in the last month”.

Analysis of 10.1

The survey referred to here is Critchlow et al (2019), on which see my analysis of 9.7.

Paragraph 10.3

“It [advertising in newspapers] also means that children and young people, can be exposed when reading print media.”

Analysis of 10.3

This statement is linked to Nelson (2005)¹⁶⁴. Yet the study itself reaches a very singular conclusion:

“The analysis fails to demonstrate that alcohol advertisers are targeting youth.”

It seems to me to be manifest that adverts of any product which appear in newspapers or magazines may be seen by anyone of any age. That, surely, is not the basis for policy. The basis must rather be evidence that such “exposure” results in consumption by persons not of the legal age; and thereafter, evidence of harm, to seek to introduce such a draconian measure as banning alcohol adverts in newspapers? Nelson finishes his paper with the following comment:

“Policymakers in the alcohol area would be well advised to turn their attention to regulation of matters of importance for youth drinking behaviors, rather than decisions made in the market for advertising space.”

Given the study is clearly not supportive of a basis for advertising restrictions, it is odd that the Scottish Government should reference it as such.

¹⁶⁴ Nelson, Jon P., Alcohol Advertising in Magazines: Effects of Price, Demographics, and Audience Size (April 2005). Available at SSRN: <https://ssrn.com/abstract=714482>



11. “Online marketing”

Paragraph 11.1

“Seeing, and actively participating with, online alcohol marketing is associated with increased alcohol consumption and an increased risk of binge and hazardous drinking behaviours.”

Analysis of 11.1

The sentence above relies on no less than three separate studies. The first of these is Noel et al (2020) which I discuss in relation the Bradford-Hill criteria of “experimental evidence” at 3.11. It is worth however teasing out a separate element to deal with the specific claims in 11.1. Note the following excerpt:

“The literature prohibits statements of causality between digital alcohol marketing and alcohol consumption from being made. However, because of the precautionary principle, the consistency of results in cross-sectional studies, and the plausibility of the relationship, parties should not be dissuaded from proactively implementing regulations that limit the potential impact of digital alcohol marketing practices.”

So, in lieu of causality, we are invited to invoke prohibitions in any event, on the basis that doing so is justified as a “precaution”. Precautionary policy does not, in my view, meet the tests of necessity and proportionality in this context.

Noel then goes on to put forward Finland as an example where a country has banned alcohol advertising in social media. Yet it also says: “No formal evaluation of Finland’s regulations has been published.” Noting my observations on alcohol per capita consumption and alcohol related deaths in Finland under 5.4, it does not appear to have had any immediate impact on either, as both rose in the following couple of years.

The second is Jernigan et al (2017). I again have dealt with that study under the headings of “Strength of Association” and “Dose Response” in my discussion around the Bradford Hill criteria at 3.11.

The third study referred to in 11.1 is Lobstein et al (2017)¹⁶⁵. This is a narrative review, meaning a review of various other studies. Out of 47 studies examined, they identified five which they say presented evidence of associations between alcohol marketing through digital media and drinking behaviour or increases consumption. Four of these studies were interview based and they say:

“None of the four studies used longitudinal designs or controlled interventions, and therefore could not determine the direction of causality.”

They do, however, go on to say the following about the fifth study:

“the controlled intervention study indicated causality, and the authors of the study concluded that digital media marketing acted to increase consumption directly, rather than as a complementary activity to marketing through other media.”

The fifth study, that claiming causality, is Goldfarb et al (2011)¹⁶⁶. Firstly, it should of be observed that a study of social media in 2011 will have dated poorly in comparison to social media in 2023; however, whilst the study is from 2011 the data it analyses is actually from 2003, 2004, and 2007. I would consider that to be of a significant vintage in the online age. Putting that critique to one side, the ratio of this study appears to me to be the following:

¹⁶⁵ Lobstein T, Landon J, Thornton N, Jernigan D. (2017) The commercial use of digital media to market alcohol products: a narrative review. *Addiction*. 2017 Jan;112 Suppl 1:21-27.

¹⁶⁶ Goldfarb, A., & Tucker, C. (2011). Advertising Bans and the Substitutability of Online and Offline Advertising. *Journal of Marketing Research*, 48(2), 207–227.



“This paper uses field experiment data on alcohol advertising to show that online display advertising has the largest impact in locations with restrictions on out-of-home advertising. We interpret this to suggest that the online advertising substitutes for the banned offline ads, thereby reducing the effectiveness of local advertising bans.”

What it says is that, in a region where a ban exists on “traditional advertising”, people were more responsive to online advertising in comparison to neighbouring regions where there was no advertising ban – but the authors themselves describe this heightened responsibility as “incremental”, and also say:

“In all cases the sample size is relatively low and as a result our results are sometimes only marginally significant.”

Having analysed four different case studies, the average outcome across all four was that a person was 4.1% more likely to purchase alcohol having seen internet advertising in an area with traditional advertising bans in place, than a person who lived in an area without a ban.

These studies are the building blocks on which the statement in **11.1** that “*online marketing is associated with an increased risk of binge and hazardous drinking behaviours*” rests. I do not consider these to be evidentially robust.

Paragraph 11.7

“We know that in spending a vast amount of time online, children and young people see and interact with alcohol marketing. Research shows that just over a quarter (27.3%) of 11-19 year olds in the UK had seen an alcohol advert on YouTube, Tumblr, Facebook, Snapchat, Instagram or other social media, in the week prior to being surveyed.”

“Another survey of 11-19 year olds found that more than one-in-ten respondents had actively participated in one form of alcohol marketing on social-media, one-in-twenty had liked an alcohol brand or shared an alcohol brand status, tweet or picture.”

Analysis of 11.7

The research referred to in the first sentence above is Critchlow et al (2019) which is also relied upon earlier and discussed at **9.7** and **10.1**. Again, I would note that there is a fudging of what constitutes “children and young people”. Study participants aged 18 and 19 are adults of legal drinking age. These are not children or young people in law. Looking at the data for the survey, I note that 24% of all respondents were 18 or 19. These are included in the “just over a quarter” number given above.

Whilst I do not dispute that an adjusted number would still result in some percentage of children and young people who have seen an advert in the last week, it would be a lower number – but that is not the point. The point is that the Scottish Government is seeking to frame policy to protect children and young people, whilst relying on numbers which include adults.

The study referred to in the second sentence is another from the same year by Critchlow et al (2019)¹⁶⁷, so do note the separate citation in the footnote. Whilst a separate study to that which I discuss immediately above, it is an analysis of the same underlying data (the 2017 Youth Alcohol Policy Survey) and therefore my comment about inclusion of adults and how that impacts on the figures applies equally here. The disparity in relation to legal drinking age does make a difference. For example, the study analyses participation by uploading statuses or pictures of themselves or friends drinking alcohol. Across the cohort the level of that type of participation is 12.2%. However, when analysed by whether the respondent was of legal drinking age, we get a clearer picture: it was

¹⁶⁷ Critchlow N, MacKintosh AM, Thomas C, Hooper L & Vohra J (2019) Participation with alcohol marketing and user-created promotion on social media, and the association with higher-risk alcohol consumption and brand identification among adolescents in the UK [Social media, higher-risk consumption, and brand identification]. *Addiction Research and Theory*, 27 (6), pp. 515-526.



only 7.8% for those aged 11 to 17, and 26.2% for those 18 and 19. Lastly, the authors of this study do not make a claim to causality:

“This study does have limitations. The cross-sectional design does not demonstrate causality between participation with marketing or user-created promotion and higher-risk consumption, albeit the results do suggest either an initiating or reinforcing role.”

Paragraph 11.12

“Alcohol branded social media channels post content, including photos and videos, to individuals who follow or ‘like’ them. High – quality posts advertise the product/s sold and show the alcoholic drink being consumed in desirable locations or contexts as well as highlighting sponsorships or tie-ins with celebrities.”

Analysis of 11.12

The research referred to here is Barry et al (2018)¹⁶⁸ and analyses alcohol brands advertising via Instagram to consider adolescent exposure. It sampled 184 posts. I was unable to access the full-text but the abstract confirms that the study is focused on the style of post:

“The production value of the posts examined was generally high, frequently featuring color, texture, shine, contrast, faces, and action. Character appeals and use of youth-oriented genres were uncommon.”

The study appears to draw no conclusions and certainly no causal link, and is more focused on drawing out details on what content is used by alcohol brands:

“This investigation represents an initial attempt to provide insights into the content alcohol brands are including in their promotional materials on social networking sites.”

“Initial insights” do not, in my submission, constitute a sufficiency of evidence to draw any conclusions.

Paragraph 11.14

“This [children and young people seeing alcohol brands] is despite age gating, which is the process of checking age of users before allowing access. UK research has found that while age verification can prevent individuals whose profile states they are under 18 years of age accessing alcohol marketing on Facebook, users of all ages can access alcohol marketing on Twitter and YouTube.”

Analysis of 11.14

The UK research referenced is Winpenny et al (2014)¹⁶⁹. This study looks at exposure of children and “young adults” to alcohol marketing on social media websites in the UK. “Young adults” in this study includes people aged from 15 to 24. At the time of the study¹⁷⁰, any person of any age could look at videos on YouTube, and Twitter did not offer age-gating unless the individual brand requires it through “an external mechanism”, so three out of five brands could be accessed by fictitious accounts set up for the study. Facebook, on the other hand, did have functioning age-gating. Given age-screening and age-gating facilities are significantly different now than they were in 2012 when the

¹⁶⁸ Barry AE, Padon AA, Whiteman SD, Hicks KK, Carreon AK, Crowell JR, Willingham KL, Merianos AL. Alcohol Advertising on Social Media: Examining the Content of Popular Alcohol Brands on Instagram. *Subst Use Misuse*. 2018 Dec 6;53(14): 2413-2420.

¹⁶⁹ Eleanor M. Winpenny, Theresa M. Marteau, Ellen Nolte, Exposure of Children and Adolescents to Alcohol Marketing on Social Media Websites, *Alcohol and Alcoholism*, Volume 49, Issue 2, March/April 2014, Pages 154–159.

¹⁷⁰ There does now appear to be age gating functionality in Youtube, but I do not have details on how this works with alcohol brands: <https://support.google.com/youtube/answer/2802167?hl=en-GB>. Twitter now has functionality on “age screening”: <https://help.twitter.com/en/safety-and-security/age-verification> which was introduced in 2013, a year after the research for this study was conducted.



research was conducted, the continuing relevance of the study is perhaps worth considering¹⁷¹. The study has nothing to say of itself about whether exposure to alcohol brands on social media led to consumption, or led to harm.

Paragraph 11.15

“Research from the United States found YouTube profiles created for fictional users aged 14, 17 and 19 were able to subscribe to 100% of the alcohol brand YouTube pages explored.”

Analysis of 11.15

This refers to Adam et al (2015)¹⁷². This study was conducted in 2014 and therefore the age restriction software and age-gating functionality at that time is no longer what is in place. Youtube, for example, introduced a new age verification AI in September 2020¹⁷³. It would, therefore, be of interest to see how the 2014 findings might stack up against the checks and balances in place in 2023, and it is regrettable that the Scottish Government has not made efforts to analyse the age-gating processes of social media platforms as they are now, not as they were in 2012 (11.14) and 2014 (11.15).

Paragraph 11.20

“Adverts are tweaked and personalised to optimise the effectiveness of them to that particular individual. This may result in alcohol marketing online being uniquely harmful to vulnerable consumers as more adverts might be served to high-volume consumers.”

Analysis of 11.20

The “adverts might be served to high-volume consumers” of the above sentence links to Carah & Brodmerkel (2021)¹⁷⁴. Looking at the study, however, this is a hypothesis only:

“Data-driven tools like collaborative ads as well as custom and lookalike audiences might be uniquely harmful to vulnerable consumers of addictive commodities like alcohol. These tools might learn to identify high-volume consumers and target them with discount products. Vulnerable consumers might be targeted disproportionately simply because targeting tools are trained to find the most susceptible consumers.”

The study offers no actual evidence of impact, if any, on vulnerable consumers. It instead references a radio podcast¹⁷⁵ which explores these concerns in a discussive/interviewing format.

Paragraph 11.21

“This can include targeting at specific times and in specific places where people can be most vulnerable to alcohol marketing messages. This may appear in user’s digital feeds while they are drinking alcohol including when they are intoxicated.”

Analysis of 11.21

This paragraph is a link to report by WHO Europe entitled “Digital marketing of alcohol: challenges and policy options for better health in the WHO European Region” (2021)¹⁷⁶. This is a significant document which goes into great detail about concerns over digital marketing of alcohol. The specific claim about marketing appearing on digital feeds whilst a person may be intoxicated appears to me to

¹⁷¹ See <https://iard.org/actions/partnership-digital-platforms> for more detail.

¹⁷² Adam E. Barry, Emily Johnson, Alexander Rabre, Gabrielle Darville, Kristin M. Donovan, Orisatalabi Efunbumi, Underage Access to Online Alcohol Marketing Content: A YouTube Case Study, Alcohol and Alcoholism, Volume 50, Issue 1, January/February 2015, Pages 89–94.

¹⁷³ <https://blog.youtube/news-and-events/using-technology-more-consistently-apply-age-restrictions/>.

¹⁷⁴ Carah N, Brodmerkel S. Alcohol Marketing in the Era of Digital Media Platforms. J Stud Alcohol Drugs. 2021 Jan;82(1): 18-27.

¹⁷⁵ Gregory, K. (2019). The pub test: why Australia can’t stop drinking. “Background Briefing”. This is a 45 minute radio podcast: <https://www.abc.net.au/radionational/programs/backgroundbriefing/background-briefing-28-07/11346966>.

¹⁷⁶ <https://www.who.int/europe/publications/i/item/9789289056434>



come from a study cited within the report, which is Moewaka Barnes et al (2016)¹⁷⁷. This study relates to a series of focus group discussions with individuals from various backgrounds in New Zealand, and in particular looks at consumption of individuals whilst engaging with other individuals whilst online in a social setting. However, whilst the study output certainly included multiple accounts from people who were intoxicated whilst using social media, I could see little which actually put forward evidence of alcohol brands appearing on digital feeds and how this impacted those individuals, and the data collected seems more about the experiences of people saying or doing things online whilst drunk.

Paragraph 11.22

“Advertising online can also allow for instantaneous purchase through ‘buy buttons’ creating a seamless flow from identifying consumer preferences, exposing consumers to a targeted piece of marketing to converting this into purchase.”

Analysis of 11.22

This section refers to Carah & Brodmerkel (2021) discussed at **11.20** above. The study says:

“Platforms create a seamless flow from identifying preferences, to exposing consumers to a targeted message, to converting that message into an action to purchase.”

This statement is a reference to a news article, not an academic paper, which is cited as Adams (2019)¹⁷⁸. This is a news item about Patrón tequila when they became the first alcohol brand to allow ordering through Instagram. The same news item does, however, acknowledge measures which are in place through such processes to ensure responsibility:

“Major beer, wine and spirits marketers paused some of their campaigns on Snapchat last year over concerns that the messages were reaching an underage audience. Snap has since introduced more stringent age checks for users and monitoring tools to see who is being targeted with ads featuring alcohol. Working with established third-party e-commerce partners like Drizly and requiring age and ID checks both in-app and in-person could help Patrón avoid similar controversy.”

Paragraph 11.24

“User-generated marketing includes sharing or liking an alcohol brand’s content including written posts, photos, videos, games and competitions. This extends the reach of the original marketing and enhances the credibility of it.”

Analysis of 11.24

This statement is based on Critchlow et al (2017)¹⁷⁹. This was an online study of 405 students with an average age of 21 and was designed to understand the relationship between “user-created” alcohol promotion within and beyond social media, and what association this had with higher risk consumption in “young adults”. The OR here was 1.64 in relation to participation in user-created alcohol promotion and an association with being classed as a higher risk drinker; the OR for awareness of (as opposed to participation in) user-created alcohol promotion and higher-risk consumption was 0.89. There are a number of points to make here.

Firstly, this is a study of a group made up entirely of adults of legal drinking age, not children or young people. The appropriateness of whether it should be offered as justification for a prohibition on alcohol advertising on social media on a policy context of protecting children and young people is a matter for debate.

¹⁷⁷ Moewaka Barnes H, McCreanor T, Goodwin I, Lyons A, Griffin C, Hutton F (2016). Alcohol and social media: drinking and drunkenness while online. *Crit Public Health*. 26(1):62–76.

¹⁷⁸ Adams, P. (2019). Patrón pops open tequila orders via Instagram Stories ads. *MobileMarketer*

¹⁷⁹ Critchlow N, Moodie C, Bauld L, Bonner A & Hastings G (2017) Awareness of, and participation with, user-created alcohol promotion, and the association with higher-risk drinking in young adults. *Cyberpsychology: Journal of Psychosocial Research on Cyberspace*, 11 (2), Art. No.: 6429.



Secondly, the group is essentially a cohort of college and university students whose behaviours in relation to consumption I find unlikely to be representative of a wider population. The study authors themselves say:

“Young adults were chosen as the sample given the high rates of higher-risk drinking and internet use that are reported in this age group in the UK.”

In other words, the cohort selected is from a group most likely to have existing associations and existing consumption patterns in the higher-risk category. The authors also concede:

“...the possibility of response bias, because of familiarity with research methods, cannot be rejected.”

Thirdly, the authors do not hold these results out to confirm causality:

“Further research is required to understand whether this association with higher-risk drinking is causal, the links between user-created alcohol promotion and commercial marketing, and the wider utility of user-created content to influence health behaviours in young adults.”

Lastly, there is a wider point about the desirability of a policy the remedy of which would appear to be the fettering of individuals sharing their views and feelings and discussing ideas. There is a clear demarcation, for me at least, between advertising and use-generated content, and an exploration of restrictions on the latter must surely recognise issues over freedom of speech.

Paragraph 11.26

“A UK survey of 400 18-25 year olds found that they were aware of, and took part in alcohol marketing on social media, and that this is linked with alcohol consumption and higher-risk drinking.”

Analysis of 11.26

The survey referred to here is the exact same one as cited in 11.24 above, ie Critchlow et al (2017). My comments above therefore apply here.

Paragraph 11.27

“We know that social media can be a public platform for young people to endorse alcohol brands and use these as an extension of their identity.”

“Young people in focus groups describe the alcohol brands they are associated with on social media as influencing their choices of new friends, and carefully selecting them on this basis – ‘I wouldn’t be friends with someone if they were liking too much rubbish.’ This lends credibility and authenticity to alcohol brands.”

Analysis of 11.27

The quote relating to social media being a “public platform...to endorse alcohol brands...” is a reference to Purves et al (2018)¹⁸⁰. This study arises from a series of focus groups with 48 people aged 14 to 17 in central Scotland. It is interesting to note that the groups indicate that association with some brands can be negative as well as positive and this appears to me to be an expression of the underlying desire for “acceptance” in association with anything, be it consumables, musical preferences, or whatever. That much is self-evident. The study does not explore how young non-drinkers might have been “nudged” or “cued” into relationships with alcohol brands or the implications for harmful drinking.

¹⁸⁰ Purves RI, Stead M, Eadie D. (2018) “I Wouldn’t Be Friends with Someone If They Were Liking Too Much Rubbish”: A Qualitative Study of Alcohol Brands, Youth Identity and Social Media. *Int J Environ Res Public Health*. 2018 Feb 16;15(2):349.



The second quote listed above is just another link to the same study. The specific wording in the study that is being leaned on (i.e., the wording around “credibility and authenticity”) here is as follows:

“The act of ‘liking’ the brand helps the brand to travel among the social networks of these young people, lending credibility and authenticity to the marketing messages in a way that would not be tolerated in an ‘offline’ environment.”

This wording is itself a reference to a further study, namely Carah et al (2014)¹⁸¹. But that is a study using data from 2011 to 2013 based purely on Facebook and is therefore contradictory to the contemporaneous study by Winpenny et al (2014) which I discuss above at **11.14** and in which age-gating practices were shown to be effective. In addition, neither of these 2014 studies reflect the more sophisticated AI that Facebook has in relation to age-restricted brands in 2023.

Underlying all of this, of course, is whether it is even within the competence of the Scottish Parliament to do anything about it, given the regulation of social media is reserved to Westminster. In addition to this, there is a question over whether it is proper for the Scottish Government to actually consult on matters which are *ultra vires* at all. I note that the Scottish Public Finance Manual details restrictions in relation to “Expenditure without Statutory Authority”¹⁸². This says:

“Ministers cannot undertake any activities giving rise to expenditure for which there are no powers (and for the avoidance of doubt the Budget Act does not confer powers). If, despite advice that there is no power to undertake the activity, Ministers insist that the expenditure be incurred then written authority to that effect should be sought from Ministers by the relevant Accountable Officer.”

It is unclear what cognisance has been given to this in relation to inclusion of matters outside of the Parliament’s competence.

Paragraph 11.28

“In Finland, commercial marketing of mild alcoholic beverages (less than 22% ABV) is banned on social media when it is either produced by consumers or produced by an alcohol company and intended to be shared by consumers. This means alcohol companies cannot use content originally uploaded by consumers (user generated) nor can they create content which is specifically aimed for consumers.”

Analysis of 11.28

The mere presence of the Finnish restrictions does not equate to those restrictions having an impact on either consumption of alcohol or on harm caused by alcohol. In fact, as readers will note in my discussion of Finland under **5.4**, alcohol consumption and deaths have actually risen since the introduction of the restrictions referred to. The fact another country has introduced restrictions is not of itself a justification to introduce parallel restrictions in Scotland.

¹⁸¹ Carah N., Brodmerkel S., Hernandez L. (2014) Brands and Sociality: Alcohol Branding, Drinking Culture and Facebook. *Convergence*. 2014;20:259–275.

¹⁸² <https://www.gov.scot/publications/scottish-public-finance-manual/expenditure-without-statutory-authority/expenditure-without-statutory-authority/>

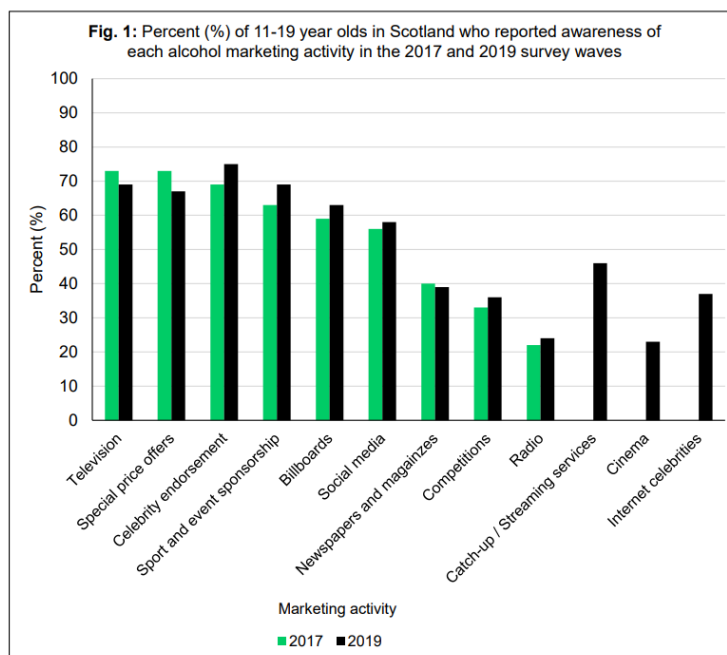
12. “Television and Radio Advertising”

Paragraph 12.4

“The Youth Alcohol Policy Survey asked participants to recall alcohol marketing activity they had seen in the month prior to the survey. In 2019, 69% had seen an alcohol advert on television, 46% on a catch up or streaming service whilst 24% had heard one on radio.”

Analysis of 12.4

The source for these numbers is a fact-sheet analysis by the University of Stirling¹⁸³ of the Youth Alcohol Policy Survey, which collected data in 2017 and again in 2019. The factsheet looks at numbers from 11-to-19-year-olds in Scotland. The table this comes from is as follows:



*Fig 23 – Source: University of Stirling factsheet “Awareness of alcohol marketing among adolescents in Scotland” (See FN 149)

It is worth noting that of 795 persons, 179 of these were adults of legal drinking age, approx. 22.5%.

Paragraph 12.8

“However, it is not just children and young people that this affects. If children and young adults are seeing regular alcohol advertising during television programming then it is not unreasonable to assume that adults in the general public will see at least as much advertising, if not more. This could be especially problematic for those in recovery.”

Analysis of 12.8

Here we have a wide, unsupported statement, about how often the adult population sees alcohol advertising on television. The implication is that adults also need to be protected from alcohol advertising despite the specific focuses on children and young people, and adults in recovery. In relation to the recovery community, there is a link provided here to the same blog referred to at 9.11 above and so my comments there apply here.

Paragraph 12.9

¹⁸³ <https://dspace.stir.ac.uk/retrieve/f145379f-a3b3-459d-8956-0079d61d8b49/Briefingforpolicymakers-YAPS-2019-Final-version.pdf>



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“Scottish Government may not have sufficient power to restrict advertising on television or radio in Scotland and may need to work with the UK Government to take action.”

Analysis of 12.9

See my comments in relation to *vires* under **11.27**.



13. “Cinema Advertising”

Paragraph 13.2

“Cinema provides a captive audience and an opportunity for advertising before films start. Alcohol adverts can make up to 40% of the commercials shown before feature films.”

“Around a quarter (23%) of 11-19 year olds in the UK reported having seen an alcohol advert in the cinema in the month before being surveyed.”

Analysis of 13.2

The figure of 40% comes from the Alcohol Focus Scotland publication “Promoting Good Health from Childhood” (2017) which is the earlier iteration of RoR. The publication states:

“Alcohol adverts can make up to 40% of the commercials shown before feature films.”

However, no citation is given for this statistic so I cannot comment further on its accuracy. The second sentence, referring to 23%, is from the same factsheet as discussed above at **12.4**.

Paragraph 13.5

“Alcohol advertising in the cinema creates a positive association between alcohol and lifestyle.”

Analysis of 13.5

This comment comes from Bhana (2008)¹⁸⁴, but in fact that is a very short article reflecting on another study¹⁸⁵ and has a special interest in outcomes relating to African Americans. The relevant sentence for our purposes is:

“Young people’s positive response to alcohol advertisements has been found to be associated with the lifestyle that was portrayed.”

But this statement is not of itself a finding-in-fact, it is a reference to yet another study, namely Austin et al (2000)¹⁸⁶. I was unable to locate the full-text of this so my ability to comment is limited. It is a study of 273 children in Washington State but the abstract provides no specific detail on alcohol advertising in a cinema setting. However, in relation to emulation or identifications of alcohol portrayals, the abstract says this:

“Perceptions of advertising desirability, the extent to which it seemed appealing, increased steadily from third to ninth grade, whereas identification with portrayals, the degree to which individuals wanted to emulate portrayals, leveled off after sixth grade.”

Paragraph 13.7

“This is an area where the Scottish Government may not have the power to implement potential restrictions on cinema advertising in Scotland and where there may be a need to work with the UK Government to take action.”

Analysis of 13.7

See my comments on *vires* in **11.27**.

¹⁸⁴ Bhana, A. (2008), “Alcohol Advertising, Movies and Adolescents”; *Addiction*, 103: 1935-1936.

¹⁸⁵ Dal Cin S., Worth K. A., Dalton M. A., Sargent J. D. Youth exposure to alcohol use and brand appearances in popular contemporary movies. *Addiction* 2008;103: 1925–32.

¹⁸⁶ Austin E. W., Knaus C. Predicting the potential for risky behavior among those ‘too young’ to drink as the result of appealing advertising. *J Health Commun* 2000;5: 57–61.



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Paragraph 13.8

“Some European countries, including Finland and Ireland, have introduced an approach whereby alcohol can be advertised in cinemas but only at films certified as 18+.”

Analysis of 13.8

See my comments at **5.4** and **11.28** in relation to Finland. In relation to Ireland, the ban referred to is under the Public Health (Alcohol) Act 2018 and my comments at **5.4** are extant: *viz* we have no data on what impact, if any, cinema restrictions in Ireland have had on consumption or harm.



14. “Restrictions on content of advertisements”

Paragraph 14.1

“Alcohol adverts often show alcohol being consumed in a glamorous, fun, cool or sociable way in order to present this in a positive manner. We know that children and young people find alcohol adverts appealing and that this influences young people to have positive ideas about drinking alcohol. Children and young people are particularly drawn to elements of music, characters, story and humour. Multiple studies, including in Scotland, have shown a link between how much a young person likes an alcohol advert and their drinking behaviours.”

Analysis of 14.1

There are multiple elements of this paragraph to deal with. Firstly, there is the claim “*We know that children and young people find alcohol adverts appealing*”. This refers to Morey et al (2017), on which see my comments at **3.7**.

Then there is the claim “*...this influences young people to have positive ideas about drinking alcohol.*” This is a reference to Boniface et al (2022), on which see my comments at **3.8**.

The next claim is “*Children and young people are particularly drawn to elements of music, characters, story and humour.*” This is a reference to Winpenny et al (2012)¹⁸⁷. This is a significant and detailed piece of work, comprising a document of some 178 pages, analysing young people’s “exposure to alcohol marketing through television and online media”. The part which is axiomatic for our purpose appears to me to be the following statement:

“For example, Waiters et al. (2001), in a focus group study with students aged 9–15 in the US, found animal characters, music and humour to be the most attractive elements of adverts across all groups.”

Whilst, as a father, I find the general observation that “*children and young people are particularly drawn to elements of music, characters, story and humour*” to be self-evident, the question is whether such characteristics are used improperly in relation to alcohol advertising. If we look at the separate study referred to here, Waiters et al (2001)¹⁸⁸, it was based on some focus group conversations amongst 9-to-15-year-olds in California in 2000. Note the following outcomes from that study:

“These discussions revealed that students like lifestyle and image-oriented elements of television beer commercials that are delivered with humor and youth-oriented music and/or characters. Conversely, they dislike product-oriented elements of alcohol commercials. Students identified the main message of television beer commercials as an exhortation to purchase the product based on its quality and its relationship to sexual attractiveness. Participants indicated that beer commercials imply that attractive young adults drink beer to personally rewarding ends. These findings suggest that television beer commercials may need to focus less on youthful lifestyle images and more on the product itself in order to appeal less to young people.”

On my reading of this, the regulatory context in California in 2000 cannot be sensibly compared to the position in Scotland in 2023, given a number of elements described here are already prohibited.

The next element of **14.1** to unpick is the sentence: “*Multiple studies, including in Scotland, have shown a link between how much a young person likes an alcohol advert and their drinking behaviours.*”

¹⁸⁷ Eleanor Winpenny, Sunil Patil, Marc Elliott, Lidia Villalba van Dijk, Saba Hinrichs, Theresa Marteau, Ellen Nolte (2012) “Assessment of young people’s exposure to alcohol marketing in audiovisual and online media”, RAND Europe.

¹⁸⁸ Waiters ED, Treno AJ, Grube JW. Alcohol advertising and youth: A focus-group analysis of what young people find appealing in alcohol advertising. *Contemp. Drug Probs.* 2001; 28:695.



The “multiple studies” part of this simply refers back to Boniface et al (2022), already referred to in the preceding sentence of the same paragraph (see above), and on which see my comments at **3.8**. The “including in Scotland” part of this refers to Gordon et al (2011)¹⁸⁹ which should be noted is different to the Gordon et al (2011) referred to at **3.13** above. The 2011 study referred to here at **14.1** is from two waves of a cohort study of 12-14-year-olds back in 2006/7 and then 2008/9, in the West of Scotland. There were 920 participants in the original study (baseline), and this dropped to 552 (follow-up). The study authors say:

“The findings show a small but significant association between awareness of and involvement with alcohol marketing, and youth drinking behaviour, even after controlling for important confounding variables. They also show a small but significant association between appreciation of alcohol advertising and youth drinking behaviour.”

In relation to the “likeability” factor which the Scottish Government is referring to, the study says this about persons who were described as non-drinkers in the baseline (i.e. first study from 2006/07):

“Involvement with alcohol marketing at baseline increased their chance/risk of initiation of drinking at follow-up.”

But they also say they:

“found no association between [alcoholic] units consumed at follow-up and baseline measures of awareness or involvement in alcohol marketing, number of brands recalled or appreciation of alcohol advertising.”

In other words, the study found no evidence of any association whatsoever between the actual amount of alcohol consumed when they surveyed the cohort in 2008/09 compared to their awareness of or participation in, or appreciation of, alcohol marketing at the earlier point in 2006/07. This finding is entirely at odds with the proposition in the Scottish Government *apropos* “likeability”, on which the study is presented to evidence. It, in fact, shows the opposite.

Paragraph 14.5

“If Scotland followed the Estonia model then we would restrict the content of adverts to a list of objective and factual criteria. The aim of this would be to make adverts less appealing and weaken the link between seeing alcohol adverts, and developing positive feelings between brands and positive attitudes towards consumption.”

Analysis of 14.5

As a general observation this sort of statement does appear to me to be detached from the reality of the experience of alcohol consumption for the moderate majority. The reality is that people do have positive attitudes towards consumption of alcohol because it is enjoyable for them. I have expressed this view elsewhere as follows¹⁹⁰:

“I have chosen to describe these proposed prohibitions as a form of 21st century temperance because the policy basis is harm-oriented. In my view that approach is limiting because it fails to acknowledge the wider benefits alcohol can bring in society, economy, and even health – for example, in the mental health benefits of socialisation, and acknowledging, for the vast moderate majority, the quantum of joy.”

Turning to the specifics of **14.5**, the reference here is a “case study” of the Estonian model. I invite readers to refer back to my comments regarding Estonia at **5.4**, and note that alcohol consumption and alcohol-related deaths both rose after the introduction of advertising restrictions there in 2018.

¹⁸⁹ Gordon, Ross & Harris, Fiona & MacKintosh, Anne & Moodie, Crawford. (2011). Assessing the Cumulative Impact of Alcohol Marketing on Young People's Drinking: Cross-Sectional Data Findings. *Addiction Research & Theory*. 19(1): 66-75.

¹⁹⁰ McGowan, Stephen (10 February 2023) “21st century temperance?”, *Scottish Financial News*: <https://www.scottishfinancialnews.com/articles/stephen-mcgowan-21st-century-temperance>



This can hardly be said to be strong evidence that Scotland should follow suit and therefore it is curious that this country is selected as the case study in this section of the Scottish Government consultation.

Paragraph 14.6

“Restricting the content of alcohol advertising would also benefit the general public, including higher-risk drinkers who can find alcohol adverts more appealing and react in a stronger way than lighter drinkers, causing increased cravings or for those in recovery who are susceptible to current alcohol marketing.”

Analysis of 14.6

The phrase “*Restricting the content of alcohol advertising would also benefit the general public*” is striking and bold. In what way would the general public benefit? How has that conclusion been reached? It would not be unusual to see such a statement in a document from a public health group campaigning for alcohol restrictions who have a particular position or agenda to pursue. However, this statement appears ideological, and it is therefore perhaps inappropriate that we should find it in a Scottish Government document. I question how this type of approach fits with the tests of proportionality. Firstly, how would a ban on advertising attain the aim sought? What if the aim is in fact *aims* (the “children and young people” aim; the “recovery community” aim; the “general public” aim)? Secondly, could the ban be fairly described as a form of minimum interference - or are there other alternative solutions with fewer restrictions? Lastly, is there a *stricto sensu* possibility to consider what the extent of the interference is in relation to other interests?

The comment goes on to stipulate that there may be benefits for “*higher-risk drinkers*”. This statement is supported with a link to RoR and again frustratingly, does not actually state what part of RoR is being relied upon. On my reading of RoR, I believe this is likely to be a reference to the following sentence (at Page 51):

“Existing literature indicates that heavy and binge drinkers react more strongly and in a different way to alcohol cues than lighter drinkers. The more someone drinks, the more likely they are to pay attention to alcohol cues, which in turn, leads to increased cravings.”

The existing literature relating to “increased cravings” which is cited here is Field (2007), on which see my comments on similar wording at 3.27, which makes the same suggestion.

Paragraph 14.7

“We know that young people find adverts that feature more factual product attributes such as ingredients and taste far less appealing than those that portray drinking lifestyles. Research has also demonstrated that in comparison to neutral and informative content, more lifestyle linked advertising has a greater influence on the attractiveness of the product and the desire to consume it. By removing the attractiveness of alcohol in the advertising we begin to change the culture around alcohol.”

Analysis of 14.7

The opening line above “*We know that young people...*” is to Henehan (2020), which I deal with at 3.11 in the sub-heading of “experimental evidence”. The part which says “*Research has also demonstrated...*” is a reference to Diouf & Gallopel-Morvan (2020)¹⁹¹. This is a French language article which I was unable to locate an English full-text version of so cannot usefully comment further.

The wider comment at the end of the above (“*By removing the attractiveness...*”) is, for me, transparently about de-coupling joy from consumption and culture. It proceeds from the unwarranted

¹⁹¹ Jacques-François Diouf & Karine Gallopel-Morvan, 2020. “The Evin law to regulate alcohol advertising. How effective is it in the case of luxury vs. product-oriented advertisements/packages? [La loi Evin de régulation du marketing de l'alcool. Quelle e,” Post-Print hal-03028452, HAL.



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inference that alcohol should be denied an intrinsic quality, that of attractiveness. This is an attack on the reality of alcoholic beverages, not on the causes and reasons which lead to people to consume the commodity in a risky or dangerous fashion; and that is the fundamental evidential mis-step. It is the difference between root cause and symptom. By making alcohol a sociological folk-devil in the Stanley Cohen¹⁹² sense of that term, we end-up with “solutions” which are reactionary – to do *something*; measures which are about show, not substance, and therefore never actually deal with the real blight, which I would suggest are the multiple forms of deprivation which lead to irresponsible consumption and harm.

¹⁹² Cohen, Stanley (1973) “Moral Panics and Folk Devils”, London, Paladin.



Part Three: Conclusions

Is there a causal link between alcohol advertising and consumption, or harm?

The Scottish Government consultation, though heavily reliant on papers presented by a single source, does contain a significant number of academic studies which explore the central question of causality. Despite the volume of this resource, any probative evidence of a causal link between the advertising and marketing of alcohol and consumption, or of harms arising, is inconclusive, and lacking materiality. At best, my reading of the sources relied upon is that it may be said that *some* studies have found a marginal or modest association – evidence of a possible correlation only. It is, however, also true to say that other studies I have looked at have found weak or no associations at all. There is no doubt that a great many of these studies are of clear and tangible interest in a wider conversation around the key question; but reliance on the body of academic studies referred to in the consultation would not, in my submission, equate to probative evidence-based policy.

It is simply not correct to categorically state that there is a body of evidence which demonstrates a causal link. In fact, there is a body of real-world evidence from other countries which have introduced alcohol advertising restrictions which indicates that the reverse is true: that there is no link at all, as consumption and deaths have gone up since the restrictions were implemented. We also have real-world evidence from Scotland which proves that there is an inverse relationship between ad-spend and sales.

There is, however, no doubt that there is a great deal of academic evidence which, to one extent or another, demonstrates some form of association; that advertising or marketing may be one factor amongst a series of factors that could influence a person's consumption patterns. But when we focus in on those studies which purport any level of association, of what I think is best expressed as a correlation, is discovered, it is repeatedly stated as modest.

Categorisation of Scientific Data

Within academia, it seems to me there is a debate around the weight to give evidence arising from assessment of scientific data versus assessment of what might be called social-scientific data. Consider the following statement¹⁹³:

“Though a variety of methods can test the statistical probability of an association, it has been long accepted in epidemiology that in observational studies a RR of <2.0 is weak evidence of causation. This is a sensible approach in so far as it limits chasing weak signals, but perhaps needs to be revised for controlled clinical trial evidence. An important caveat is that association, however large the relative risk, does not prove causation.”

That particular quote comes not from studies around alcohol advertising but on epidemiological data from clinical trials. That type of data, I would suggest, is a distant cousin from the sort of quasi-sociological data on which most of the academic studies in this consultation are based – discussion groups, telephone interviews, surveys and are attempts to assess human behaviour. In my view, the weight, or reliability, which can be attached to these social science type surveys and studies is of a lesser evidential value than the weight which can be attached to material fact, due to the absence of subjectivities in the latter¹⁹⁴.

There are so many confounders and limitations in all of these studies, even those which are longitudinal as opposed to cross-sectional, that it seems to me that applying the Bradford Hill criteria at all to this sort of data imbues it with an artificial heightened sense of observable scientific reliability. A great deal of it is ultimately based on subjective views given by individuals, views which may be infected with any number of biases including the very knowledge that they are a part of a study,

¹⁹³ Warren JB, Day S, Feldschreiber P. Symmetrical analysis of risk-benefit. Br J Clin Pharmacol. 2012 Nov;74(5):757-61. (see also Mussen F, Salek S, Walker SR. Benefit-Risk Appraisal of Medicines. A Systematic Approach to Decision-Making. Chichester: Wiley-Blackwell; 2009.)

¹⁹⁴ See Melville v City of Glasgow Licensing Board [2012] Scot SC 77 for a discussion of material fact in alcohol licensing under the 2005 Act.



meaning the *Hawthorn effect*¹⁹⁵ could be in play. Further, that the participants know they are part of a study around alcohol consumption and harm, and therefore I have residual concerns around issues of confirmation bias and to what extent the *Baader-Meinhof*¹⁹⁶ phenomenon could be in play.

It should also be noted that the Bradford Hill approach and criteria are not themselves without critique or developed comprehensions, such as in Shimonovich (2021)¹⁹⁷, Fedak et al (2015)¹⁹⁸, Cox (2018)¹⁹⁹ and Hofer (2005)²⁰⁰.

Weight given to “Lived Experience” as a basis for policy

Some of the sources referred to in the Scottish Government consultation or within RoR go nowhere near causality and are simply a curated collection of anecdote. Such input appears to have been given an elevated status under the totem of “lived experience”. It is no surprise that such voices should be given a place in this consultation, given the Scottish Government Alcohol Framework 2018 and supplementary policy statements around this issue have specifically said they would.

Lived experience is, for the individual, unassailable and inarguable. That does not mean it is evidential, or, to put it another way, evidence of objective fact. Lived experience may, or may not, be representative. Lived experience may, or may not, be logical. The accuracy of reported lived experience may be impacted by the equity of collection. Lived experience is by definition biased towards the individual. But the greatest concern is where only the lived experience of proponents of a single view are given disproportionately elevated status, especially those of a small cohort – and that is the case with this consultation.

Where are the views of the people whose employment would be adversely affected, and what of the implications for their and their family’s health²⁰¹? Where are the lived experience views of the people in local communities, secondary and tertiary businesses which would be impacted? Where are the lived experience views of persons who have positive things to say about alcohol advertising such as how local bars, distilleries and brands promote tourism or culture and investment, or how grass-roots sports are supported in their local area? This is important in relation to whether the proposal is appropriate to deliver the objective, without being unreasonable or disproportionate.

Lived experience is not material fact. It is not scientific data. It is anecdotal evidence. That is not to say such statements should be dismissed; but the evidential value of such statements as the basis for policy, when no contrary views are ventilated, should be of concern to the prudent policy-maker who is obliged to proceed under the rule of law.

Strength of Association and Strength of Evidence

This brings me to revisit the point of strength of association and how that translates to strength of evidence. Strength of association can be presented as relative risk (RR) or as an Odds Ratio (OR). The use of “relative risk” in legal language does have an influence on US tort law and of course a significant amount of the academic studies in the field of alcohol and alcohol advertising are from North America. Although there is no black and white answer here, in US medical negligence cases²⁰²:

“...some courts have accepted that, on the ‘balance of probabilities’, a direct causal link has been established if the RR associated with the exposure is greater than two”.

¹⁹⁵ The Hawthorn Effect is a sociological term which suggests that people who know they are under scrutiny modify their behaviours/answers, and therefore the resultant data is not a true reflection.

¹⁹⁶ Baader-Meinhof is an expression of “frequency bias” where a person who is directed to a phenomenon has a heightened awareness of it, often resulting in an illusionary perception that the frequency with which it is observed is greater than the factual reality.

¹⁹⁷ Shimonovich, M., Pearce, A., Thomson, H. et al. Assessing causality in epidemiology: revisiting Bradford Hill to incorporate developments in causal thinking. *Eur J Epidemiol* 36, 873–887 (2021).

¹⁹⁸ Fedak KM, Bernal A, Capshaw ZA, Gross S. Applying the Bradford Hill criteria in the 21st century: how data integration has changed causal inference in molecular epidemiology. *Emerg Themes Epidemiol*. 2015 Sep 30;12:14.

¹⁹⁹ Cox LA Jr. Modernizing the Bradford Hill criteria for assessing causal relationships in observational data. *Crit Rev Toxicol*. 2018 Sep;48(8):682-712.

²⁰⁰ Höfler, M. The Bradford Hill considerations on causality: a counterfactual perspective. *Emerg Themes Epidemiol* 2, 11 (2005).

²⁰¹ See Roelfs et al (2011): David J. Roelfs, Eran Shor, Karina W. Davidson, Joseph E. Schwartz – “Losing life and livelihood: A systematic review and meta-analysis of unemployment and all-cause mortality” - *Social Science & Medicine* 72 (2011) 840-854.

²⁰² Beiderman et al (2020) “The Use of Statistics in legal proceedings: a primer for courts”, The Royal Society of Edinburgh.



However, the picture is far from clear, and a US court applying a blanket rule in this regard was found to have erred in law in 2020²⁰³. Of course, such an approach is not one taken in Scottish courts (at least, that I am aware of) and as discussed, the relevant comparison for our purposes is the “*but for*” test. But, even that only takes us so far, because the wider tests of *vires*, necessity and proportionality are ultimately what policy-makers need to have in mind; as well as the specificity of the health and legal framework in Scotland – for example, in relation to health, the consideration of the longer term prevailing downward trend of alcohol consumption and harm; and in relation to the law, the consideration of the impact of minimum pricing on alcohol consumption and harm.

However, even if we set aside all of that, and imagine for a moment that a RR of 2.0 creates a legal causal link in Scots law (which it certainly does not), there are very few results in the studies I examine above which actually yield that sort of output. The majority use the OR function instead of the RR and as can be noted in my assessments above there is no clear consensus; and all of the studies bar perhaps one or two do not even hold themselves out to be confirmation that a causal link has been proven.

Strength of data *post facto*

Lastly, I would suggest that data from the real world after alcohol advertising restrictions have been implemented is absent or inconclusive (Siegfried et al²⁰⁴; Critchlow & Moodie (2021)²⁰⁵), or actually shows that there is no relationship (or an inverse relationship) because consumption and harms have increased. The Scottish Government commissioned AFS to look into the following countries where advertising restrictions exist: Estonia, Finland, France, Ireland, Lithuania, Norway, and Sweden; and then make recommendations. The AFS approach was to explore lessons from these countries on how to achieve the restrictions being passed into law and overcome obstacles such as industry opposition. My approach was to explore data from all of these countries as to what the actual impact had been (see my analysis under **5.4**).

In my assessment, the use of these international “case studies” as evidence to justify restrictions in Scotland is weak, or indeed counterfactual to the proposition. There is a point to be made about the impact of Covid-19 on the more recent efforts to understand dynamics in alcohol consumption and harm, and decoupling any impact of lockdowns from wider consumption trends is something which I suspect will keep the alcohol academics busy for some years yet.

²⁰³ Carl v. Johnson & Johnson, 237 A.3d 308, 311 (N.J. Super. Ct. App. Div. 2020). The debate is a long-standing one in the US, see: “Courts disagree as to the use 2 as a bright-line test” Carruth & Goldstein (2001) “RELATIVE RISK GREATER THAN TWO IN PROOF OF CAUSATION IN TOXIC TORT LITIGATION” *Jurimetrics*, Vol 41, No 2 pp 195-209.

²⁰⁴ See FN 49.

²⁰⁵ Critchlow N, Moodie C. Awareness of alcohol marketing one year after initial implementation of Ireland's Public Health (Alcohol) Act and during the COVID-19 pandemic. *J Public Health (Oxf)*. 2022 Dec 1;44(4):e537-e547.



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Part Four: Declarations

Following the model of most of the academic papers I have reviewed for this paper, I consider it appropriate to provide the following details.

About the Scottish Alcohol Industry Partnership (SAIP)

The partnership²⁰⁶ is made up of representatives from leading companies, and their trade associations, involved in the production and sale of alcohol in Scotland. The purpose of the group is “to support, devise and deliver initiatives that contribute towards the promotion of responsible drinking and tackle alcohol-related harm in Scotland.” The SAIP is a client of TLT LLP and instructed me to conduct this review.

About the Author

I am a partner at UK law firm TLT LLP and Head of Licensing (Scotland). I am Accredited by the Law Society of Scotland as a Specialist in Liquor Licensing Law. I am the author of multiple legal and academic texts on alcohol and licensing law including *McGowan on Licensing* (2021, Edinburgh University Press). I have chaired or been appointed to multiple Scottish Government working groups on alcohol and licensing law reform over many years. I hold or have held trustee positions in various trade and licensing related charities including the BII, the Ben, and the Institute of Licensing. I have represented licence holders/applicants in front of almost every licensing board in Scotland.

PAPER ENDS

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²⁰⁶ <https://www.saip.org.uk/>