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To legislate or not to legislate? Stop and search for alcohol for under-18s: a review of the evidence

by Dr Kath Murray, University of Edinburgh

Introduction

Following the amalgamation of Scotland’s eight police forces into ‘Police Scotland’ under the Police and Fire Reform (Scotland) Act 2012, the use of stop and search quickly surfaced as a controversial and divisive issue for the newly established single service. In March 2015, against a backdrop of political and media pressure, the Scottish Government established an Independent Advisory Group to review the direction and regulation of stop and search. The remit consisted of two main strands: first, to consider the use of non-statutory stop and search, a tactic that requires neither legal authority nor reasonable suspicion; and second, to draft a statutory Code of Practice. On 31 August 2015, the Advisory Group presented their report to the Cabinet Secretary for Justice, with the recommendation that that non-statutory stop and search should end. The report concluded that the abolition of non-statutory stop and search ‘will not result in any significant gaps’ in officers’ powers (2015; 14). However, the report also acknowledged concerns raised by Police Scotland that abolition would prevent officers searching under-18s for alcohol (2015; 7). On 3 September 2015, the Scottish Government announced they had accepted the Advisory Group recommendations in full. These were tabled as a package of amendments to the Criminal Justice (Scotland) Bill, and passed at the Committee stage on 29 September 2015. The Justice Committee also passed an additional enabling amendment (tabled by the Cabinet Secretary for Justice) which, subject to public consultation, would allow an affirmative Scottish statutory instrument to provide a power of search for alcohol for under-18s, based on reasonable suspicion. To explain, officers do not have statutory powers of stop and search for alcohol for underage possession of alcohol (which is not a criminal office). Note that officers do however, have statutory powers of seizure for alcohol under Section 61 of the Crime and Punishment (Scotland) 1997 Act, which until June 2015, were recorded as alcohol stop searches.

The aim of this paper is to examine the veracity of the case for introducing stop and search powers for alcohol for under-18s. The paper focuses on the relationship between underage drinking, deprivation and policing, with a view to assessing how a potential search power for alcohol might impact on young people from more deprived areas, whose probability of contact with the police is higher (McAra and McVie, 2010). The paper presents quantitative data analysis, drawn from three data sources. First, data from the 2013 sweep of the Scottish Adolescent Lifestyle Smoking and Alcohol Survey (SALSUS). This is a national survey on young people’s substance use undertaken in Local Authority and independent schools across Scotland. In 2013, the SALSUS sample size was 33,685, drawn from thirteen and fifteen year olds. The
paper also uses open-access stop and search data available on the Police Scotland website, and data from the Scottish Index of Multiple Deprivation (SIMD), a multi-indicator measure of relative deprivation in Scotland. An overview of each data source is set out in the appendix.

The paper is organised in four parts. To begin, the paper explains the background to the alcohol amendment and the contested landscape around stop and search in Scotland. Part two examines trends and patterns in under-age drinking using SALSUS data. The analysis shows that although underage drinking is evenly distributed in terms of background deprivation (as measured by the SIMD), young people from the most deprived areas are most likely to experience difficulties and get into trouble with the police due to underage drinking. In part, this is due to a lack of protective factors that tend to benefit the least deprived young people. Part three uses Police Scotland data to assess the size of the ‘gap’ for alcohol search powers for under-18s. The analysis shows that most alcohol is detected using existing powers of seizure under Section 61 of the Crime and Punishment (Scotland) Act 1997, rather than non-statutory stop and search. The final part of the paper weighs up the benefits and costs of stop and search powers for alcohol, and concludes that the impact of relationships between young people and the police, and the related risk of criminalisation, may outweigh the potential gain.

Background

Following the amalgamation of Scotland’s eight police forces into Police Scotland under the Police and Fire (Reform) Scotland Act 2012, the use of stop and search quickly surfaced as a controversial, and in many ways defining issue for the new single service (Donnelly, 2015). In fact, a high volume approach to stop and search predated the single service by more than a decade, peaking in 2012/13, at a rate seven times higher than England and Wales. Nonetheless, in the ‘quieter’ climate that characterized Scottish policing prior to reform (Murray, 2015a), the use of stop and search remained politically and socially low-key (Murray, 2015a, Scott, 2015; 21).

Recorded search rates began to fall shortly after the Police Scotland merger in April 2013, gradually at first, and then at a galloping rate (Murray, 2015b). By June/July 2015 recorded search rates had dropped by around seventy-five percent on the same period in the previous year, principally due to falling levels of non-statutory stop and search, which historically accounted for around seventy per cent of recorded stop searches. By July 2015, the proportion of non-statutory searches had fallen to twenty-five per cent. Figure 1 shows the post-reform drop in overall, statutory and non-statutory recorded stop searches between April 2013 and May 2015.
The post-reform fall in recorded search rates can in part be linked to the unprecedented degree of criticism levelled at Police Scotland, which played out in the public sphere. Academics, journalists, opposition MSPs and advocacy groups highlighted the scale of recorded searches, the disproportionate impact on young people, and in particular, the widespread use of non-statutory stop and search, which the Scottish Human Rights Commission (2015) viewed as unlawful and open to challenge under the Human Rights Act 1998. By February 2015, the future of non-statutory stop and search appeared to be in jeopardy, at which point police executives raised concerns that a move to abolish non-statutory stop and search might result in a ‘gap’ in officer’s powers of search in relation to under-age drinking:

‘[Deputy Chief Constable Rose Fitzpatrick] said the removal of consensual stop-search would entail a “significant consequence and loss” for the police, leaving a gap which would need to be filled. She said: “If we look at our stop and searches for last year, just over a third were for alcohol and about 40 per cent of those were in relation to alcohol and under-18s. This is a big issue for society, not just the police.’ (The Scotsman, 13/2/2015)\(^1\)

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\(^1\) Police ‘need powers to search under-18s’ http://www.scotsman.com/news/politics/top-stories/police-need-powers-to-search-under-18s-1-3689757#axzz3oA3ChyJR
However, these statistics were muddied by recording practices that aggregated stop searches for alcohol with statutory seizures for alcohol under Section 61 of the Crime and Punishment (Scotland) 1997 Act. As noted earlier, prior to June 2015, Police Scotland recorded Section 61 alcohol confiscations as stop searches – which meant that it was impossible to calculate the number of alcohol detections that resulted from stop and search and the number that resulted from seizure. Nonetheless, as DCC Fitzpatrick suggested, it was generally assumed that a good deal of alcohol detections resulted from non-statutory stop searches.

In March 2015, Police Scotland announced that stop and search would no longer be undertaken on a non-statutory basis, unless no other statutory option was available. In practice, given the absence of stop and search powers for underage possession of alcohol, this meant that officers could continue to search young people for alcohol on a non-statutory basis. The announcement coincided with the publication of a critical report by HMICS, which also advised a move to a statutory model (2015; 4), and the establishment of the Independent Advisory Group to review the direction and regulation of stop and search. Mindful of the direction of change, which signalled a shift from the hitherto understanding that stop and search was an ‘operational matter’ (2/4/2014 MacAskill, SP Official Report col. 29702), Police Scotland also reiterated the call for additional search powers for alcohol, should non-statutory stop and search be abolished (2015; 7).

On 31 August 2015, the Independent Advisory Group presented its report to the Cabinet Secretary for Justice (Scott, 2015). The report made ten recommendations, including the abolition of non-statutory stop-and-search. On the question of search powers for alcohol for under-18s, the report stated that the Advisory Group had ‘not been able to form a concluded view on whether a gap in powers exists that could not be dealt with by existing powers, and also on whether a power to search children for alcohol would be desirable’ (Scott, 2015; 14).

A lack of consensus was also evident in the various submissions to the Advisory Group. On the one hand, the Association for Chief Superintendents (ASPS) argued for the introduction of search powers for alcohol for under-18s, should non-statutory stop and search be abolished:

‘There is a real concern, based on the perception of the role alcohol plays in driving such behaviours, that there are insufficient legal powers to search for alcohol in the absence of search by consent and a gap would be created that could leave young people exposed to a risk of harm.’

(ASPS cited in Scott, 2015; 79)

The Highland Council also expressed support for a power of search for alcohol, premised on the understanding that most non-statutory or ‘consensual’ searches related to alcohol:

‘The Local Police Commander has advised Members that around 25 per cent of stop and search activity is consensual in Highland and that it mostly relates to alcohol use because there is no legal basis to search for alcohol. He advises that the position in Highland differs from elsewhere in Scotland. With these assurances from the Local Police Commander, Members felt that there was a case for consensual stop and search but that there should be a code of practice to underpin its use.’ (cited in Scott, 2015; 75)

And a submission by Barnardo’s supported a search power for alcohol on welfare grounds:
‘We understand that Police Scotland have called for additional statutory powers to search young people for alcohol. We would be interested in wider discussion about this as we can see merit in such a move should the decision to abolish non-statutory stop and search be taken. Police should have the ability to search for, and remove alcohol from children and young people in line with GIRFEC principles, if the child or young person is putting their own health and safety at risk, this is a wellbeing concern and police should be able to deal with it as such.’
(cited in Scott, 2015; 90)

On the other hand, John Carnochan, the retired director of the Violence Reduction Unit, argued for a more collaborative approach:

‘If alcohol is a problem, and I believe it is, then we require a collaborative and measured response if we are to effectively limit the damage and harm it can cause. Introducing a law to give police the power to stop and search those under-18s they suspect to be in possession of alcohol is neither measured nor collaborative.’
(Submission to Independent Advisory Group on Stop and Search).

Reflecting a lack of consensus both within the Advisory Group and among the consultation responses, the Advisory Group Report recommended:

‘That the Scottish Government should hold an early consultation on whether to legislate to create a specific power for police officers to search children under 18 for alcohol in circumstances where they have reasonable grounds to suspect that they have alcohol in their possession. Such a power might also extend to searching those suspected of supplying alcohol to those under 18. The Government should ensure that the consultation process engages effectively with children and young people. In introducing any such power care should be taken to ensure that there is no consequent increase in criminalisation of children and young people.’

Having accepted the Advisory Group recommendations in full, in late September 2015, the Scottish Government tabled a package of amendments to the Criminal Justice (Scotland) Bill, together with an additional ‘enabling’ amendment, which provided for stop and search powers for alcohol for under-18s, subject to public consultation.

Amendment 226. Criminal Justice (Scotland) Bill
‘(1) The Scottish Ministers may by regulations amend section 61 (confiscation of alcohol from persons under 18) of the Crime and Punishment (Scotland) Act 1997 so as to confer on a constable a power, exercisable in addition to the power in subsection (1) or (2) of that section—
(a) to search a person for alcoholic liquor,
(b) to dispose of anything found in the person’s possession that the constable believes to be such liquor.
(2) Prior to laying before the Scottish Parliament a draft of an instrument containing regulations under this section, the Scottish Ministers must consult publicly on the regulations that they are proposing to make.
(3) Regulations under this section are subject to the affirmative procedure.’

In response, the Scottish Commissioner for Children and Young People urged the Committee to reject the amendment because it was likely to weigh the debate in favour of legislation:
‘Even if it is tempered by the need to consult on future Regulations, the starting point for this Amendment is an assumption that secondary legislation is likely to be passed. My concern is that an affirmative procedure is unlikely to allow for sufficient parliamentary scrutiny of a matter that is likely to have wide-reaching effects on children and young people across Scotland.’

(Scottish Commissioner for Children and Young People, September 2015)

However, the amendment passed at Committee stage, with only one vote against. Thereafter, the full package of stop and search amendments, together with the alcohol Amendment, was incorporated into the Criminal Justice (Scotland) Bill (Stage 2).

Against this background, the remainder of this paper examines the veracity of the case for introducing a search power for alcohol for under-18s. The paper examines underage drinking patterns, how officers use their powers of search and seizure in relation to alcohol, and considers how alcohol powers might affect relationships between young people and the police.

**Under-age drinking in Scotland**

The prevalence of underage drinking in Scotland is widespread. Evidence from the 2013 Scottish Schools Adolescent Lifestyle and Substance Use Survey (SALSUS) shows that 19% of fifteen year olds had drunk alcohol in the last week (SALSUS, Table A3b). Of these, 59% reported that they had been drunk (SALSUS, Table A10). The proportion of fifteen-year old girls who reported getting drunk was also significantly higher than the proportion of fifteen year old boys, at 64% and 54% respectively (ibid.). Figure 2 shows the reported ‘usual’ frequency of alcohol drinking among thirteen and fifteen year olds.

**Figure 2. Usual frequency of drinking alcohol, 13 and 15 year olds, 2013**

<table>
<thead>
<tr>
<th>Frequency of drinking</th>
<th>Age 13</th>
<th>Age 15</th>
<th>Both ages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Almost every day</td>
<td>1%</td>
<td>1%</td>
<td>1%</td>
</tr>
<tr>
<td>About twice a week</td>
<td>2%</td>
<td>5%</td>
<td>4%</td>
</tr>
<tr>
<td>About once a week</td>
<td>3%</td>
<td>10%</td>
<td>8%</td>
</tr>
<tr>
<td>About once a fortnight</td>
<td>6%</td>
<td>15%</td>
<td>12%</td>
</tr>
<tr>
<td>About once a month</td>
<td>11%</td>
<td>18%</td>
<td>16%</td>
</tr>
<tr>
<td>Only a few times a year</td>
<td>63%</td>
<td>44%</td>
<td>50%</td>
</tr>
<tr>
<td>Never drink alcohol now</td>
<td>14%</td>
<td>7%</td>
<td>9%</td>
</tr>
<tr>
<td><strong>Total (%)</strong></td>
<td>100%</td>
<td>100%</td>
<td>100.00%</td>
</tr>
</tbody>
</table>

Base: all pupils who had ever drunk alcohol: 5,155 11,933 17,088

Cramer's V = .263 p =*** (*p ≤ .05 **p ≤ .01 ***p ≤ .001 NS = non-significant)

Figure 2 shows a significant increase between the two age groups. By the age of fifteen, sixteen percent drank at least once a week, thirty-three per cent drank between once a fortnight and once a month, and a further fifty-one per cent stated that they drank alcohol either a few times a year or not at all.
The SALSUS data also show that underage drinking is falling. Figure 3 shows that underage drinking among 13 and 15 year olds in 2013 was at its lowest level since recording began in 1990.

Figure 3. Trend in the proportion of 13 and 15 year olds who drank in the last week, 1990-2013

Drilling further down, Figure 4 shows that the prevalence of underage drinking is broadly consistent in terms of background deprivation, as measured by the SIMD.

Figure 4. Frequency of drinking alcohol, by SIMD (%) 2013

<table>
<thead>
<tr>
<th>Scottish Index of Multiple Deprivation Score</th>
<th>Most deprived</th>
<th>Least deprived</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Almost every day</td>
<td>1%</td>
<td>1%</td>
</tr>
<tr>
<td>About twice a week</td>
<td>5%</td>
<td>4%</td>
</tr>
<tr>
<td>About once a week</td>
<td>8%</td>
<td>8%</td>
</tr>
<tr>
<td>About once a fortnight</td>
<td>11%</td>
<td>11%</td>
</tr>
<tr>
<td>About once a month</td>
<td>14%</td>
<td>17%</td>
</tr>
<tr>
<td>Only a few times a year</td>
<td>50%</td>
<td>51%</td>
</tr>
<tr>
<td>Never drink alcohol now</td>
<td>11%</td>
<td>9%</td>
</tr>
<tr>
<td>Total</td>
<td>100%</td>
<td>100%</td>
</tr>
<tr>
<td></td>
<td>3,090</td>
<td>3,366</td>
</tr>
</tbody>
</table>


In terms of location, the SALSUS data show that most thirteen and fifteen year olds drink in private indoor spaces, for example, at home, at friends’ houses or at parties. Trend data also indicate that the overall proportion of those who drink outside halved between 2008 and 2013; from 33% to 15% (SALSUS 2013, Table A21). However, the ‘usual location’ varied.
significantly by background deprivation. Figure 5 shows that those from the most deprived areas were more likely to drink outside, less likely to drink in their own homes, and more likely to drink at their friend’s houses than those from the least deprived areas. Girls were also significantly more likely to drink outside than boys, at 21% and 17% respectively. Those from the least deprived areas were most likely to drink at parties or at home.

**Figure 5. Usual location of drinking, 13 and 15 year olds (%) 2013**

<table>
<thead>
<tr>
<th>Location</th>
<th>Most deprived</th>
<th>Least deprived</th>
</tr>
</thead>
<tbody>
<tr>
<td>At a party with friends</td>
<td>40%</td>
<td>48%</td>
</tr>
<tr>
<td>At a friend’s house</td>
<td>42%</td>
<td>38%</td>
</tr>
<tr>
<td>At home</td>
<td>42%</td>
<td>50%</td>
</tr>
<tr>
<td>Outdoors (street, park etc.)</td>
<td>23%</td>
<td>19%</td>
</tr>
</tbody>
</table>

Source: SALSUS 2013 (variables SIMD, DRKPTY, DRKHOME, DRKFRHOME, DRKOUT). N = 16,286. Weighted data. Columns add up to more than 100% as more than one answer could be given. Only significant responses shown (p < ***).

Looking at access to alcohol, Figure 6 shows that the three main sources of alcohol for thirteen and fifteen year olds were friends, relatives, or from home, either with or without permission.

**Figure 6. Sources of alcohol, 13 and 15 year olds, 2013 (%)**

- From a friend: 41%
- From a relative: 35%
- From home, with or without permission: 28%
- Steal from off-licence/shop/supermarket: 4%
- Club or disco: 2%
- Off-licence: 1%
- Pub or bar: 1%
- Supermarket: 0%
- From a shop: 0%

Source: SALSUS 2013 (variables STEAPSHP, BUYCLUB, BUYPUB, BUYSUPM, BUYOFF, BUYSHP, GETHOME, BUYREL, BUYFRI) N = 15,485. Weighted data.

However, sources of alcohol also varied significantly by background deprivation. Figure 7 shows data on who had most recently bought alcohol for the respondent. The statistics show that children from the most deprived backgrounds were least likely to obtain alcohol from parents and carers or from same age friends, and most likely to obtain alcohol from strangers or other people that they knew, compared to those from other areas.
Figure 7. Who bought alcohol for 13 and 15 year olds (on the most recent occasion) by SIMD (%) 2013

<table>
<thead>
<tr>
<th>Scottish Index of Multiple Deprivation Score</th>
<th>Most deprived</th>
<th>Least deprived</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Friends and siblings</td>
<td></td>
<td></td>
</tr>
<tr>
<td>My brother or sister</td>
<td>6%</td>
<td>7%</td>
</tr>
<tr>
<td>A friend of my own age/boyfriend/girlfriend</td>
<td>7%</td>
<td>9%</td>
</tr>
<tr>
<td>A friend older than me</td>
<td>25%</td>
<td>23%</td>
</tr>
<tr>
<td>Parents and carers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>My mother, father, carer or parent’s partner</td>
<td>21%</td>
<td>29%</td>
</tr>
<tr>
<td>Strangers and acquaintances</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Someone I knew of, but didn’t know personally</td>
<td>9%</td>
<td>6%</td>
</tr>
<tr>
<td>A stranger</td>
<td>18%</td>
<td>14%</td>
</tr>
<tr>
<td>Someone else</td>
<td>13%</td>
<td>13%</td>
</tr>
<tr>
<td>Total</td>
<td>100%</td>
<td>100%</td>
</tr>
<tr>
<td></td>
<td>1,565</td>
<td>1,616</td>
</tr>
</tbody>
</table>

Source: SALSUS 2013 (variables BUY4WHO, SIMD). N = 7,790. Weighted data. Cramer’s V = .091, p =*** (*p ≤ .05 **p ≤ .01 ***p ≤ .001 NS = non-significant)

Relatedly, Figure 8 shows that the proportion of 13 and 15 year olds who stated that their parents did not allow them to drink alcohol at home was significantly higher among those from the most deprived areas.

Figure 8. Proportion of 13 and 15 year olds allowed to drink alcohol at home by SIMD, 2013

<table>
<thead>
<tr>
<th>Scottish Index of Multiple Deprivation Score</th>
<th>Most deprived</th>
<th>Least deprived</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Yes, always</td>
<td>3%</td>
<td>7%</td>
</tr>
<tr>
<td>Yes, sometimes</td>
<td>63%</td>
<td>69%</td>
</tr>
<tr>
<td>No, never</td>
<td>34%</td>
<td>24%</td>
</tr>
<tr>
<td>Total</td>
<td>100%</td>
<td>100%</td>
</tr>
<tr>
<td></td>
<td>2,958</td>
<td>3,246</td>
</tr>
</tbody>
</table>

Source: SALSUS 2013 (variables ALCHOME, SIMD). N = 14,672. Weighted data. Cramer’s V = .071, p =*** (*p ≤ .05 **p ≤ .01 ***p ≤ .001 NS = non-significant)

The fact that children from the most deprived areas are less likely to drink alcohol at home appears to be reflected in off sales usage. Figure 9 shows that those from the most deprived areas are at least as twice as likely to obtain alcohol from an off-licence or a shop as those from the least deprived areas:
Figure 9. Proportion of 13 and 15 year olds who had obtained alcohol from an off-licence/shop in the last year, by SIMD, 2013

<table>
<thead>
<tr>
<th>Scottish Index of Multiple Deprivation Score</th>
<th>Most deprived</th>
<th>Least deprived</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td>Off-licence</td>
<td>7%</td>
<td>3%</td>
</tr>
<tr>
<td>Shop</td>
<td>10%</td>
<td>7%</td>
</tr>
<tr>
<td>Total</td>
<td>2,743</td>
<td>3,041</td>
</tr>
</tbody>
</table>

Off-licence (variables BUYOFF, SIMD) Cramer’s V = .073, p =***
Shop (variables BUYSHOP, SIMD) Cramer’s V = .071, p =*** (*p ≤ .05 **p ≤ .01 ***p ≤ .001 NS = non-significant)

More broadly, the SALSUS data suggest that children from the most deprived areas have a more problematic relationship with alcohol. Children from the most deprived areas were significantly more likely to miss school, be sick, or get into a fight due to alcohol, compared to those from the least deprived areas. Also, a significantly higher proportion of children from the most deprived areas reported getting drunk in the last week (65%) compared to children from the least deprived areas (51%). Figure 10 shows that children from the most deprived backgrounds were most likely to get into trouble with the police due to alcohol, compared to the other groups.

Figure 10. Proportion of children who got into trouble with the police in the last year due to drinking alcohol by SIMD, 2013

<table>
<thead>
<tr>
<th>Scottish Index of Multiple Deprivation Score</th>
<th>Most deprived</th>
<th>Least deprived</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td>No</td>
<td>82%</td>
<td>86%</td>
</tr>
<tr>
<td>Once</td>
<td>10%</td>
<td>8%</td>
</tr>
<tr>
<td>Twice or more</td>
<td>8%</td>
<td>6%</td>
</tr>
<tr>
<td>Total</td>
<td>100%</td>
<td>100%</td>
</tr>
</tbody>
</table>

Cramer’s V = .053, p =*** (*p ≤ .05 **p ≤ .01 ***p ≤ .001 NS = non-significant)

Taking an overview, the SALSUS data show that despite the overall consistency in terms of the prevalence of underage drinking in terms of background deprivation, young people from the most deprived areas are more likely to experience problems due to underage drinking and more likely to get into trouble with the police.\footnote{Variables: SIMD, Wasoffschl2, Wasvomit2, Wasfight2, Wastrubplc2, drnk7.} In part, this may relate to access and supervision. Children from the most deprived areas are less likely to drink at home, more likely to drink outside, more likely to use off sales, less likely to obtain alcohol through parents and carers, and more likely to obtain alcohol from strangers. This finding also chime with McAra and McVie’s (2005) observation that young people from deprived backgrounds are more likely to have lifestyles that made them more ‘available’ for policing. Whether an
additional search power is the best way to address these concerns is unclear, particularly bearing in mind that underage drinking in not a criminal offence. For instance, it may be that more educational or diversionary strategies are more appropriate, as well as policies which tackle adult behaviour (see part IV). The next part of the paper examines how officers use their current powers of search and seizure. The analysis shows first, that the ‘gap’ for a power of search for alcohol appears to be exceptionally small, and second, that the way in which underage drinking is policed does not always resonate with welfarist aims.

**Police use of search and seizure for alcohol**

Is there a ‘significant’ gap for alcohol powers? Statistics suggest that around 40% of non-statutory stop searches recorded by the police in 2014/15 related to alcohol. However, as noted earlier, this statistic also included statutory alcohol seizures under Section 61 of the Crime and Punishment (Scotland) Act 1997. In June 2015, Police Scotland introduced an upgraded database, which records alcohol and searches and alcohol seizures as separate categories. This means, for the first time, that it is possible to assess the size of the ‘gap’, or the number of alcohol detections that result from non-statutory searches. The statistics are striking.

In June/July 2015, alcohol accounted for 27% of searches and seizures. Most searches and seizures related to drugs, which accounted for 55% of all incidents. In this period, officers recorded 6,199 searches and seizures that stated alcohol as the primary reason (searches), or recovered alcohol (seizures). Of these, 71% (4,420) were statutory seizures, and 29% (1,779) were stop searches. In other words, nearly three quarters of incidents undertaken in relation to alcohol used existing statutory powers. Over two thirds of alcohol searches and seizures involved those aged over 18 (69%).

Looking at under-18s only, just over half of alcohol incidents involved seizure (1,065) and the remainder involved search (830). In other words, officers were more likely to *search* under-18s, and less likely to use confiscation powers, compared to all ages. Figure 11 shows the proportion of alcohol incidents for all ages and under-18s, by incident type in June/July 2015.

*Figure 11. Alcohol incidents by type (%) all ages and under-18s, June/July 2015*

![Figure 11. Alcohol incidents by type (%) all ages and under-18s, June/July 2015](source: Police Scotland, 2015: http://www.scotland.police.uk/about-us/police-scotland/stop-and-search-data-publication)

Base: All ages alcohol searches and seizures = 6,199. Under-18s alcohol searches and seizures = 1,895.
Detection and alcohol
As noted, in June/July 2015, 830 searches for alcohol were carried out on under-18s. Of these searches, 11% were positive. This was much lower than the detection rate for all ages (18%), which suggests that a lower threshold for suspicion was used when searching young people. Looking at the incidents in which alcohol was actually recovered, most detections resulted from seizure. For all ages, alcohol was found in 4,872 recorded incidents in June/July 2015. Of these, 91% (4,420) resulted from seizure. Only 9% (452) resulted from stop and search. Of these, 3% (146) were on a statutory basis, and 6% (306) were on a non-statutory basis.

Just under a quarter of all alcohol detections related to under-18s (1,196). Of these detections, 89% (1,065) resulted from statutory powers of seizure, 3% (39) from statutory stop searches, and 8% (92) from non-statutory stop searches. Figure 12 shows the proportion of alcohol detections, for all ages and for under-18s.

Figure 12. Alcohol detections by incident type (%) all ages/under-18s, June/July 2015

Base: Searches and seizures resulting in detection. All ages (n = 4,872), under-18s only (n = 1,173)

The fact that the vast majority of alcohol detections involving under-18s (89%) resulted from existing statutory powers of seizure, not stop and search, suggests that the case for additional statutory search powers is weak. Whilst under-18s were more likely to be searched for alcohol, compared to all ages, these searches were far less likely to result in detection, compared to all ages, indicating that the tactic was not used effectively. Most alcohol detections resulted from seizure, which suggests that the ‘gap’ is not significant.

A search power for alcohol on welfare grounds
One of the main reasons for introducing a power of search for alcohol for under-18s is children’s welfare. For instance, the Barnardo’s submission to the Independent Advisory Group on stop and search recommended a search power for alcohol on welfare and protection grounds (2015). However, welfarist rationales do not always translate into police practice. Rather, a mix of welfarist and punitive rationales appear to inform the disposals used by officers in relation to underage drinking.

Taking an overview of disposals and sanctions for all age groups, of the 4,809 incidents which recovered alcohol (and nothing else) in June/July 2015,28 40% generated a crime report.
and 30% resulted in a fixed penalty notice. Only 27% resulted in no further action, whilst 2% generated a submission to the Interim Vulnerable Persons Database. The interim Vulnerable Persons Database records child and adult concerns, child offending, domestic abuse and hate crime.

Looking at statistics for under-18s, the disposals are less punitive. Notably, alcohol detections were far less likely to prompt further action. Of the 1,173 incidents recorded in relation to alcohol, in 66% of cases there was no further action. The proportion of crime reports and fixed penalty notices was also lower, at 13% and 14% respectively. Figure 13 shows the breakdown of detections for all age groups and under-18s respectively.

### Figure 13. Disposals for alcohol searches and seizures by age-group, June/July 2015

<table>
<thead>
<tr>
<th>Disposals</th>
<th>All ages</th>
<th>%</th>
<th>Under-18s</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Crime report submitted</td>
<td>1,946</td>
<td>40%</td>
<td>149</td>
<td>13%</td>
</tr>
<tr>
<td>Fixed penalty notice issued</td>
<td>1,438</td>
<td>30%</td>
<td>162</td>
<td>14%</td>
</tr>
<tr>
<td>No further action</td>
<td>1,317</td>
<td>27%</td>
<td>775</td>
<td>66%</td>
</tr>
<tr>
<td>Raised on the Interim Vulnerable Persons Database (iVPD)</td>
<td>113</td>
<td>2%</td>
<td>107</td>
<td>9%</td>
</tr>
<tr>
<td>Entered on the Scottish Intelligence Database (SID)</td>
<td>88</td>
<td>2%</td>
<td>39</td>
<td>3%</td>
</tr>
</tbody>
</table>

Base: All searches and seizures which only detected alcohol (all ages = 4,809, under-18s = 1,173)
Totals do not add to 100% as more than one disposal may be generated.

However, there was significant geographical variation in the types of disposals used by officers in relation to under-18s. Again, looking at incidents which recovered alcohol (and nothing else), 84% of alcohol detections in the East resulted in no further actions, compared to 79% in the North and 61% in the West. Of the three regions, officers in the West were most likely to raise crime reports and most likely to issue Fixed Penalty Notices. Figure 14 shows the geographic distribution of disposals issued in relation to underage drinking in June/July 2015 (stop searches and seizures).

Whilst the disposal statistics in relation to underage drinking are less punitive than for all age groups, the fact that over a quarter of incidents prompted either a crime report or a Fixed Penalty Notice (27%) is striking. The statistics also point to differences in the way in which young people are policed across Scotland, with a greater degree of discretion evidenced in the East and the North, compared to the West, where 33% of alcohol detections generated a crime report or a Fixed Penalty Notice.
Figure 14. Disposals for underage possession of alcohol by Command Area (%) June/July 2015

This geographic variation reflects long-standing cultural and policy differences in Scottish policing (Terpstra and Fyfe, 2015; Murray, 2015a) which is likely to be reproduced in the use of search powers for alcohol, should this be legislated for. Put simply, young people in the West appear to be policed with less discretion than those in the East and the North. In part, this observation may relate to the enforcement-based, command-and-control style of policing used in Strathclyde police from 2007 onwards under Chief Constable Sir Stephen House, and appropriated nationally under Police Scotland from April 2013 onwards:

As Sir Stephen House (2013: 9–10) emphasized in a public lecture, ‘the unique selling point that we [the police] have is that we are an enforcement agency’ (Terpstra and Fyfe, 2015; 539).

At the time of writing, following the resignation of Sir Stephen in August 2015, the direction and tenor of Scottish policing remains uncertain. Nonetheless, established differences in policing styles and cultures across Scotland mean that a welfarist approach to the use of alcohol powers cannot be assured. The final part of the paper draws together the main findings and assesses the costs and benefits of a stop and search power for alcohol.

A stop and search power for underage alcohol: cost and benefits

‘[W]e should judge any new law not on the benefit it provides when applied correctly but rather the damage it will do when applied incorrectly. I see little benefit in this proposed legislation but I do see the potential to damage the relationship between a police service and a significant part of the public it serves.’ (John Carnochan, 2015)
It is widely recognised that alcohol misuse is a major social problem in Scotland, associated with violence and ill-health (Scottish Government, 2008, 2009, 2012). In 2009, the Scottish Government published ‘Changing Scotland’s Relationship with Alcohol: A Framework for Action’. The Framework resulted from an earlier discussion paper (2008) which adopted ‘a new and visionary approach, recognising the need to change Scotland’s relationship with alcohol so that we can realise our potential as individuals, families, communities and as a nation’ (2009; 4). In line with this outlook, the Framework advocated a preventative, multi-stranded partnership approach to tackling alcohol abuse, with the aim of achieving ‘real, lasting social and cultural change’ (2009; 15). A number of proposals related to children and young people, which were diversionary or educational in tenor, or aimed at tackling adult behaviour, including licensing. For example, the Framework proposed: improving misuse education in schools; supporting diversionary and youth work opportunities; providing support for off-sales test-purchasing programmes and tightening restrictions on alcohol advertising. The Framework also supported related educational initiatives to raise awareness among young people of the dangers of knife-carrying, and supported the Community Initiative to Reduce Violence (CIRV), an initiative introduced by the Violence Reduction Unit in 2005 to tackle collective violence in the East End of Glasgow. In a progress report published in 2012, the Scottish Government stated that it would invest £126 million over the next three years to support the continued implementation of the alcohol framework. The salient question is whether a search power for underage possession of alcohol would make a constructive contribution to the existing strategy; or act to exacerbate some of the difficulties experience by young people in relation to alcohol, particularly those from the most deprived areas.

To recap, the SALSUS data show that the overall distribution of underage drinking in terms of background deprivation is relatively even. However, it also seems clear that children from the most deprived areas have a more difficult relationship with alcohol. At first glance, this observation appears to support additional stop and search powers for alcohol, principally on welfare and protection grounds. However, the case is not clear-cut on several counts, as explained below.

First, research evidence shows that adversarial contact with the police is more likely to draw young people into the criminal justice system. Drawing on data from the Edinburgh Study of Youth Transitions and Crime (ESYTC), McAra and McVie (2005, 2010) show that working class children were more likely to come to the attention of the police than their middle-class counterparts. Previous police contact also acted as a key factor in predicting future police contact, even when controlling for other factors such as offending behaviour. Significantly, children drawn into the youth justice system were more likely to maintain their involvement in serious offending. McAra and McVie concluded that there was a serious risk of criminalisation amongst those young people, generally the most vulnerable and deprived, who were repeatedly recycled around youth justice services, with little support. Note that these findings hold whether the contact is on a punitive basis, or on welfarist grounds, for instance, through the Children’s Hearing System. Either way, contact with the criminal justice system was more likely to draw young people in, to label young people, and to increase the likelihood of further offending.

The findings from the ESYTC underpin Scotland’s progressive Whole Systems Approach (WSA) to Youth Offending, which aims to keep young people out of the criminal justice
system (Scottish Government, 2015). However, as McAra and McVie caution, there is a tension between the increased use of stop and search, and the development of WSA in dealing with young people, premised on minimal intervention (2015; 291).

Second, the policing of underage drinking does not reflect the demographics of underage drinking, far from it. Rather, there appears to be an uncomfortable degree of hypocrisy in terms of underage drinking, deprivation and policing. Whilst the overall prevalence of underage drinking is more or less even in terms of background deprivation, young people’s experiences of alcohol are very different in terms of background, as is the way in which society responds to young people from deprived areas. Children from the least deprived areas benefit from protective factors. They are more likely to drink at home and are less likely to obtain alcohol through strangers or to use off licences. Children from the most deprived areas do not benefit from these factors. Children from the most deprived areas are significantly more likely to source alcohol from off sales, to ask strangers to buy alcohol and to drink outside. These differences in terms of supervision and access to alcohol are also likely to put children from the most deprived areas at greater risk of adversarial police contact. As John Carnochan argues, a stronger and fairer case can be made for tackling responsible adults and targeting off sales in more deprived areas:

What about policing those off sales that sell to under-18s? It might be a better use of resources to have a local authority enforcement officer on duty outside every off sales to ensure compliance… How about taking the licences off those shops immediately that they breach the rules and sell alcohol to children. Judicial hearings would obviously follow but the licence would be revoked until the hearing.’ (2015; 3).

Third, the available evidence on disposals does not point to a welfarist policing response, particularly in the West of Scotland. Recall that over a quarter of underage alcohol detections in June/July 2015 resulted in either a crime report or a Fixed Penalty Notice, whilst in the West, 33% of underage alcohol detections led to either a crime report or a Fixed Penalty Notice.

Fourth, the case for stop and search alcohol powers hinges on the assumption that the potential impact on violence and disorder would outweigh the costs in terms of the impact on police-community relationships, and the ability of the police to do their job more broadly. Yet despite decades of research, there is no robust evidence to support this argument (Delsol and Shiner, 2015). Whilst stop searches can detect or disrupt offending behaviour, the wider preventative or deterrent effect is unknown. Specifically, there is no empirical evidence on the marginal effect of stop and search on deterrence, or as Hales (2015) puts it, ‘how much deterrence you get for x additional stop and searches’. This observation does not discount the possibility that stop and search can prevent violence and disorder, which may seem intuitive in relation to alcohol. Nonetheless, the relationship has not been meaningfully quantified or substantiated.

On the other hand, there is a strong body of evidence that shows if stop and search is used unfairly it can damage police-community relationships (Stone and Pettigrew, 2000; Bland et al. 2000; Miller et al., 2000; LSE/Guardian, 2012, Open Society/Stopwatch, 2013; Fratello et al., 2014). A small body of research evidence also points to the adverse impact of stop and search on young people’s relationships with the police in Scotland (Anderson et al., 1994; Reid Howie Associates, 2001, Cook, 2015). For example, a small-scale study of vulnerable
young people commissioned by the Centre for Youth and Crime Justice based at the University of Strathclyde reported poor relationships with the police, in part, exacerbated by stop and search:

‘Most of the young people seemed to feel that the police were a service simply best avoided, talking about being stopped and searched, sometimes repeatedly throughout the day, and the sense of injustice and alienation that this breeds in the relationship. A big issue also seemed to be the perceived inconsistencies in police treatment of young people, and the fact that meeting the ‘rare good guy’ doesn’t change your opinion of the rest.’ (Cook, 2015; 8)

Given the extent to which stop and search has been used in Scotland in the last decade, there is a risk that additional stop and search powers may incur further damage to relationships between and police and young people. Whilst Scottish policing has broadly cleaved to a consensual imagery (Gorringe and Rosie, 2010), there are regional differences in the way that young people are policed, some more enforcement-based than others (Fyfe, 2010; Murray, 2015a). Looking ahead, a more constructive and fairer approach will require time, resources and a clear steer from senior officers to address these inconsistencies. Additional enforcement powers are unlikely to facilitate this direction.

Finally, the argument in favour of alcohol legislation assumes that the removal of non-statutory stop and search will result in a ‘gap’ in relation to underage possession of alcohol. Preliminary data from the updated stop and search database does not appear to support this argument. Strikingly, only eight per cent of alcohol detections in relation to under-18s in this period resulted from non-statutory searches, whilst eighty-nine per cent of detections resulted from existing statutory powers of seizure under Section 61 of the Crime and Punishment (Scotland) Act 1997. As Chalmers (2015) observes, the fact that the power of seizure for alcohol under Section 61 does not extend to a power of search was intended to minimise tension between young people and the police. The Scott Report also acknowledges this point:

‘The absence of such a power was mooted as “one of the great strengths” of the legislation as it was feared that the exercise of such a power might create tension and conflict between the police and young people. This is something the Scottish Government and Scottish Parliament ought to keep in mind when exploring the merits of a new power to search for alcohol.’ (Scott, 2015; 37)

The Police Scotland statistics add further weight to this observation. The fact that most alcohol detections result from seizure, not search, together with the risk of criminalisation should a power of search for alcohol be introduce, suggest that statutory powers of seizure under Section 61 are sufficient.

References


HMICS (2015) *Audit & Assurance Review of Stop and Search: Phase 1*, HMICS.


Appendix 1. Data sources

*Scottish Schools Adolescent Lifestyle and Substance Use Survey (SALSUS) 2013*

SALSUS is the primary source of data on substance using behaviour among young people in Scotland. The 2013 survey is part of a long running series of national surveys of young people’s substance use. From 1982 to 2000 these were carried out jointly in Scotland and England to provide national information on smoking behaviour (from 1982), drinking behaviour (from 1990) and drug use (from 1998). In 2002, Scotland introduced its own (SALSUS) survey. The survey provides national policy makers with vital information to help develop and evaluate policies to reduce the prevalence of substance use in Scotland and to monitor progress towards achieving Scottish Government targets. It is an ideal data source with which to inform the debate on stop and search powers for alcohol. An overview of the 2013 main findings may be accessed here:


*Scottish Index of Multiple Deprivation (SIMD)*

The SIMD is one of the most commonly used statistical indicators of deprivation in Scotland, and can be used to map out both the distribution of overall deprivation, and identify areas most adversely impacted by certain types of deprivation. The SIMD provides a multi-dimensional indicator of relative deprivation which measures deprivation in relation to seven domains (employment, income, health, education, geographic access, police recorded crime and housing). An overall measure of deprivation is constructed from the weighted sum of the seven domain scores. Deprivation scores are calculated at the ‘data zone’ level (which have a median population of 769), and are ranked from ‘most deprived’ (1), to ‘least deprived’ (6505). Deprivation is most commonly framed in terms of a 15% cut-off point (equivalent to 976 zones), which describes the 15% ‘most deprived’ areas or zones.

*Police Scotland stop and search statistics*

In June 2015 Police Scotland introduced an upgraded database which led to a significant improvement in recording standards. Additional data-fields include the legislative powers used by officers when carrying out a search as well as the grounds for searching people. The introduction of a separate recording field for statutory seizures also means that police practice is captured far more accurately. In late September 2015, data for June/July 2015 were released. Clearly, these data provide a very small snapshot. However, they are more detailed and accurate than data previously released by Police Scotland, and provide important insights into police practice.