

Licensing Reform: From Order to Chaos?

The benefits claimed by the government for the Licensing Act 2003 include simplification and modernisation, increased freedom on how we spend our leisure time, greater protection for those who live in the vicinity of licensed premises and a reduction in crime and disorder. Yet there is no research to support these claims and the liberalisation of alcohol availability comes at a time of acute concern over alcohol-related problems. This article critically assesses the main provisions of the Act, sets them in their wider context and examines practical experience with the Act to date.

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Introduction

The consumption of alcohol is commonplace throughout the Western world, enjoying a high level of social approbation. Alcohol is freely available and openly consumed by some 90% of the British population and occupies a central position in most social settings as ‘our favourite drug’ (Royal College of Psychiatrists, 1986). However, a wide range of alcohol-related problems has long been recognised. These problems include health issues, such as liver cirrhosis and foetal alcohol syndrome, accidents and absenteeism at work, crime, disorder and nuisance, drink-drive casualties and other forms of social harm such as ‘binge drinking’. Not surprisingly, the law has long sought to regulate the supply of alcohol.

The coming into force, on 24th November 2005, of the Licensing Act 2003—based on the White Paper *Time for Reform: proposals for the modernisation of our licensing laws* (Home Office, 2000)—brings fundamental reform to licensing law, policy and procedure for England and Wales. It is a major piece of social legislation which, from quiet beginnings, has attracted massive public debate and media attention. This attention reflects the fact that the Act attempts much more than minor administrative reform and updating. The Act regulates the provision of alcohol, entertainment and late-night refreshment, bringing three separate regimes under one piece of legislation. Responsibility for alcohol licensing is transferred from licensing justices, sitting at magistrates’ courts, to ‘licensing authorities’ (which equate, in most cases, to local authorities). In carrying out its functions, the licensing authority must have regard to the ‘licensing objectives’—the prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm.

Under the Act, justices' licences and other alcohol, entertainment and refreshment licences are replaced by a new 'premises licence'. If alcohol consumption is included as an activity on the premises licence, any sales must be conducted by or under the authority of a 'personal licence' holder and the name of a 'designated premises supervisor' must be endorsed on the premises licence. The most contentious feature of the Act, especially for the media and those who live in the vicinity of licensed premises, is the abolition of 'permitted hours'. This liberalising provision brings with it the possibility of round-the-clock opening and was responsible for much of the delay and difficulty which has plagued the passage and enactment of the new law (matters were not helped by the transfer of responsibility for licensing from the Home Office to the Department of Culture, Media and Sport (DCMS) in 2001).

Enacting the New Law

The Licensing Bill was introduced in the Lords in November 2002. Running to 196 clauses and eight schedules, it was accompanied by 77 pages of 'Explanatory Notes', a 42-page 'Regulatory Impact Assessment', 22 pages of 'Delegated Powers' and 15 pages of a 'Framework for Guidance to be Issued Under Clause 177'. The last of these was to be issued to local authorities on the discharge of their responsibilities under the Act. The guidance itself had not been produced. In the House of Lords, there was concern that the Bill could not be considered properly without this guidance. Consequently, at the end of February 2003 'an early rough draft' (to use its own words) of the guidance was issued by the DCMS. This draft ran to 104 pages. When the final version of the guidance appeared, it ran to 178 pages and had been significantly amended and expanded. Both the 'rough draft' and the final version describe the guidance as 'a key mechanism for promoting best practice, ensuring consistent application of licensing powers across the country and for promoting fairness, equal treatment and proportionality' (DCMS 2004, para. 1.4). It is, therefore, regrettable that the legislature did not have the final version during the passage of the Bill.

Despite facing considerable challenge in its passage through Parliament (including a last-minute concession on Morris dancing), the Bill emerged largely unscathed. The Act received the Royal Assent on 10th July 2003. The government envisaged a six-month transitional period from the old to the new system, with the new regime becoming fully operational in July 2004. However, this was not to be. Between publication of the White Paper in April 2000 and the introduction of the Licensing Bill in November 2002, responsibility for licensing was passed from the Home Office to the DCMS. Although key personnel were transferred between the departments, including Andrew Cunningham, the civil servant with responsibility for the new legislation, the move from one government department to another may have contributed to the difficulties, uncertainties and delays which accompanied introduction of the new system. The transfer from the Home Office to the DCMS, *Tourism Division* (my emphasis) may also have sent the wrong signals on the crime

and disorder implications of alcohol licensing. It certainly led to heated exchanges between the Home Office, troubled by the possible repercussions of flexible hours for crime and disorder, and the DCMS.

The Home Office, alarmed at the mounting and relentless critiques of the Act, particularly of the 'round-the-clock' opening provisions, and increased concern over binge drinking and town centre misbehaviour, orchestrated a redrafting of the guidance and the introduction of new measures designed to combat alcohol-related crime and disorder. The DCMS published the final, and heavily-amended, version of the guidance on 7th July 2004 (DCMS, 2004), some two years after the Act was passed. On the same date, the DCMS announced the timetable for the transitional period for conversion to the new system. Local authorities would start to receive applications for new licences, and for the conversion of existing licences, on the 7th February 2005—the 'first appointed day'. There would be a six-month period, ending on 6 August 2005, during which existing licence holders could apply for so-called 'grandfather rights', under which the terms and conditions of existing justices' licences would then be replicated on new premises licences. It was also announced that the 'second appointed day', on which existing justices' licences would cease to have effect and the new licences would be activated, was to be 'about November 2005'.

The second half of 2004 saw mounting pressure build up against the Act. The Home Office was joined by the public health lobby and a campaign in sections of the media. There was conjecture that the Act, or at least the provisions on hours, would be lost or delayed. This may have been averted by the replacement of David Blunkett as Home Secretary by Charles Clarke in December 2004.

The DCMS, presumably sidetracked by the need to address crime and disorder issues, fell dramatically behind with implementation of the Act. Despite assurances that the secondary legislation needed for introduction and operation of the new Act would be published in plenty of time, seven statutory instruments were laid before Parliament as late as 13th January 2005, to come into force on 7th February (the first appointed day). This meant that local authorities, licensees and their lawyers did not have the material necessary to commence the transitional process until the day on which that process started. Training programmes and books that were produced before the secondary legislation were either incomplete or incorrect. As a result, local authorities had to embark on urgent programmes of training for their staff and council members. This applied to both transitional and new licence applications. Meanwhile, magistrates' courts needed to make provision for hearing appeals from licensing authority decisions while continuing to administer the system of justices' licences. Often, they had to do so with heavily depleted staff, since many staff had moved to employment with local authorities.

Further problems were generated by the reluctance of existing licensees to apply for conversion of their licence. Some 38,000 had failed to apply by the 6th August 2005 deadline and many more delayed their applications until the end of the six-month transitional period. The length and complexity of the application form had deterred many. More importantly, to apply early was to waste money, since the new licence

would fall to be renewed annually on the date that it was issued, even though it would not come into force until the second appointed day. As a result, local authorities and lawyers were faced with a flood of conversion applications in July and August (there are some 190,000 licensed premises, as many as 500,000 'licensees' and untold tens of thousands of premises providing late night refreshment).

There was speculation that the second appointed day would have to be moved to 2006 in order to allow local authorities to process the deluge of applications that had been received. However, on 8th June 2005 the government confirmed its licensing timetable. The Licensing Minister, James Purnell, announced the second appointed day as Thursday 24th November:

November 24th will signal the end of the outdated licensing system which dates back as far as the First World War. It heralds the beginning of a regime which recognises that the vast majority of people should be treated like the adults they are and gives the industry the flexibility to meet the needs of their customers. (DCMS Press Release 077/05, *Government Confirms Licensing Act Timetable*)

The government claims that impressive benefits will result from the 2003 Act. These benefits include reduced bureaucracy, complexity and cost, greater freedom for the public to enjoy leisure facilities and a corresponding opportunity for expansion within the drinks and leisure industry. Moreover, the provisions of the Act are claimed to be a central plank in the government's crime and disorder strategy, with the new law balancing 'liberalisation and deregulation with new levels of protection for local residents and communities' (DCMS press release, 9 July 2003).

There is no doubt that reform, particularly of the Licensing Act 1964, was long overdue. However, even before the Act was passed, fears were being expressed that the reforms would produce increased complexity, cost and disorder. It is, say many commentators, unfortunate that the Act introduces liberalisation of alcohol availability at a time of acute concern over alcohol-related problems (see, for example, Academy of Medical Sciences 2004). There are some basic questions that must be asked of the Act. Will it produce a simplified and cheaper system? How will local authorities deal with their new responsibilities? Does it provide increased protection for local residents? Is it wise to embark on a liberalisation of alcohol availability when alcohol-related problems pose such a serious cause for concern?

The New Law: Simplification?

The Act replaces more than 20 statutes dealing with alcohol, entertainment and late-night refreshment licensing. It introduces 'a single integrated scheme for licensing premises which sell alcohol, provide public entertainment or provide refreshment late at night' (DCMS press release, 15th November 2002). Seven existing licences (alcohol, public entertainment, private entertainment, cinema, theatre, late-night refreshment house and night café) are replaced with a single premises licence. Licensing functions are brought together into a single framework, with powers to grant licences conferred on local authorities. If there are no representations

(objections) made to an application then the licence is granted administratively, without the need for a hearing. In contrast, under the old law applications generally had to be made at the magistrates' court, in front of the licensing justices. These measures should combine to produce a simpler and cheaper system. The separation between premises and personal licences is also intended to simplify the operation of the system and to avoid unnecessary bureaucracy and committee hearings.

Premises and Personal Licences

A premises licence is required for any premises where licensable activities are taking place. These licensable activities are defined as the sale by retail of alcohol, the supply of alcohol by or on behalf of a club, the provision of regulated entertainment and the provision of late night refreshment. The last of these activities is defined as the sale of hot food or drink between the hours of 11 pm and 5 am. Given the wide definition of 'premises' in the Act, this provision applies to businesses ranging from all types of hot takeaway food outlets, through those serving hot drinks (for example, some garage service stations) to outlets such as burger vans and hotdog stands. This brings possibly hundreds of thousand of premises into a system previously unknown outside London, thus incurring licensing costs for previously exempt premises. The aim is to bring a degree of regulation to late night refreshment in order to address disorder in and around such premises.

Regulated entertainment includes a number of activities: the performance of a play; the exhibition of a film; an indoor sporting event; boxing or wrestling entertainment; the performance of live music; the playing of recorded music; the performance of dance; and any entertainment of a similar description to live music, recorded music or dance. To be caught by the Act, the entertainment must be performed for an audience (public or private) and its purpose must be to entertain that audience. This means that darts matches and pool tournaments are probably exempt. So, too, are film exhibitions for education, information or advertisement. Also exempt are incidental music (for example, in shops or restaurants) and simultaneously broadcast television and radio programmes (but not recorded programmes). Entertainment at a religious service or at a place of religious worship, garden fetes (unless for private gain) and Morris dancing are also outside the scope of the Act. These provisions seek to allay concerns that the wider definition of 'entertainment' under the Act would unduly restrict the performance of live entertainment by including, for example, activities such as spontaneous singing.

An operating schedule must be submitted with each application for a licence. The complexity of the application form and the detail required has caused some consternation amongst the licensed trade (applying for conversion and/or variation of their existing licences) and others interested in acquiring licenses. However, the government has responded by arguing that, since the premises licence does not have to be renewed, this is a one-off procedure with long-term benefits (justices' licences were subject to tri-annual renewal). On the other hand, it is worth noting that the cost of licenses has risen dramatically. Whereas a justices' licence cost £35 for three

years, there is both an application and annual fee for a premises licence. This is based on the non-domestic rateable value of the premises, divided into five bands. The annual fee ranges from £70 to £1,050 (and may include entertainment, which was subject to a separate fee). A personal licence costs £37 and lasts for 10 years. Increased sales and applications for longer hours may be sought in order to recoup these increased fees.

A personal licence will allow the holder to sell or serve alcohol for consumption on or off any premises, providing there is a premises licence in place. The applicant must be aged over 18 years, in possession of a relevant qualification, not have had a personal licence revoked in the previous five years, have applied on the correct form and paid the correct fee. If these criteria are met, the licence must be issued. If not, it must be refused. Where there are unspent relevant convictions, the police may object. If they do so and the matter cannot be resolved by mutual agreement, a hearing is held. There is power to endorse, suspend (for a maximum of six months) or revoke a personal licence if the holder is convicted of a relevant offence. The holder must produce the licence upon request to a constable or at a police station within seven days.

Once the licence is obtained, it is 'portable'. This means that it authorises the holder to sell alcohol at any premises, rather than just those named on the justices' licence. This is a welcome reform, but the added requirement that a designated premises supervisor must be named on the premises licence compromises that flexibility. Application for a personal licence is made to the local authority in which the applicant is normally registered. It is generally agreed that a single central body would have been simpler and preferable. However, the government has so far refused to implement such a scheme.

Transfer to Local Authorities

In 1552, a statutory system for the licensing of alehouses was placed under the control of local justices. Some 450 years later, the justices have lost this jurisdiction to the local authorities. Strong pressure from two main sources, the government and the drinks' trade, precipitated this move. Jack Straw, when Home Secretary, made no secret of his desire to abolish the magistracy and there were plans to streamline the criminal court system (through the Auld enquiry, set up December 1999). The criminal work of the magistrates' courts could transfer to a new integrated criminal court and the family jurisdiction could go to the county court, but what of licensing? Since local authorities were responsible for other local licensing matters, such as public entertainment, they have historically seemed the appropriate place for liquor. However, Jack Straw is no longer Home Secretary, the relevant Auld reforms have been abandoned and the magistrates' courts continue as before. So, from a governmental perspective there remained little to be gained from the move (except, of course, the shifting of financial responsibility for the administration of licensing from central to local government).

The other proponent of reform, the drinks' trade, also underwent a change of mind. Long-term and vociferous critics of the way in which licensing justices administered the system, they lobbied hard for changes in the law. Their main point of criticism was that the justices were inconsistent and unpredictable in their approach to applying the licensing laws. There were some 400 licensing districts, each of which may have had their own policy guidelines (ranging in length from two to 48 pages) and distinctive approach. It was all a bit of a lottery, with different rules in different areas. There was also the use of the concept of 'need' to consider. This restricted the number of licensed premises and was keenly embraced by most licensing committees. Larger operators of licensed premises, keen on expansion, found that this concept often thwarted their ambitions. However, in 1999 there was a significant change in this field.

Responding to criticism, and no doubt wishing to retain the jurisdiction (a task force report in 1998 had recommended transfer to the local authorities), the Justices' Clerks' Society and Magistrates' Association published *The Good Practice Guide* in 1999. This was adopted throughout the country, replacing local policies and ensuring a degree of certainty and consistency. 'Need' was also abandoned (see below). The *Guide* brought a much needed consistency of approach and was updated annually by a group of experienced practitioners. Hearings became simpler and better structured, most licences were granted and trade criticism evaporated. The general consensus in the period leading up to the Licensing Bill, certainly among the trade and licensing practitioners (not to mention the magistrates and local authorities), was that the jurisdiction should remain with the licensing justices. The move to local authorities was thought to be unnecessary and, for some, was a cause for concern.

The main fear of opponents of local authority oversight was that the move to local authorities might produce the sort of unsatisfactory system that for many years had plagued licensing before the justices. This view gained support from the fact that each of some 400 licensing authorities around the country must determine and publish a statement of policy. So, once again, there were close to 400 policies to be considered. However, local authority policy statements must take account of the legislation, regulations and DCMS guidance. This should ensure a degree of consistency. The policies must also be put out to consultation. As part of this consultation process, three trade associations—the British Institute of Innkeeping, the British Pub and Beer Association and the Association of Licensed Multiple Retailers—considered all 376 policies and made representations on many of them. They then joined forces to instruct a firm of specialist licensing lawyers (Popplestone Allen) to challenge a number of the policies. Thirty policies were viewed as *ultra vires* and three were selected for judicial review—those from Doncaster, Gloucester and Canterbury. Two of the authorities amended their policies. The Administrative Court reviewed the third, Canterbury. The policy was found to be illegal, but an amendment had been proposed that would go some way to remedying the illegality. No relief was granted and the judge refused to quash the policy. This was, said Popplestone Allen, a 'Victory for the Trade Associations' (Popplestone Allen website, 25th July 2005). A close reading of the judgment suggests that the decision was rather less than a

‘victory’, but it does show that the trade is able and willing to challenge and constrain the exercise of local discretion by way of judicial review. Further, it is a fact that local authorities have limited budgets. Generally, they are concerned to avoid expensive litigation.

Increased Protection for Local Residents?

An important factor to be considered in any discussion of ‘opening hours’ is the possible impact on the quality of life of those living near to premises selling alcohol. Such impact may, for example, be by way of noise nuisance from the premises or as customers leave the premises. The later the terminal hour, the more noticeable will be any noise. The Act therefore allows people living in the ‘vicinity’ of the premises to make representations against applications.

Even prior to the Act, provision existed to allow local residents to object to licence applications before the justices. The government states that the new law gives increased protection for local residents. It is difficult to see how this claim can be justified. Some examples follow. The system of advertising applications is much the same under both the old and new provisions. However, under the old law an objector did not have to give written notice of an objection and could simply turn up on the day of the application. The *Good Practice Guide* suggested that the notices advertising the application should request that written notice of an intention to object should be sent to the court at least seven days before the hearing, outlining the basis of the objection. This was sensible but did not exclude an objector who heard late of the application. Nor did it limit the objector to the objections contained in the letter.

Under the new system, there is a time limit, of 28 days from the date of the notice, in which to object. If a hearing follows, discussion of matters outside the written notice of objection will not be allowed without the agreement of both parties. Also, representations can only be made by residents living in the vicinity of the premises. Experience suggests that this provision is being used restrictively and is excluding objections from those who would have been allowed to object under the old law. The luxury of a full quasi-judicial hearing, with evidence on oath, the opportunity fully to put one’s case and the opportunity for cross-examination, has also been taken away. Under the new system, which is described as administrative, the local authority can put a time limit on both applicants and objectors and cross-examination will only be allowed at the discretion of the licensing committee. The rules are more closely prescribed, with less discretion to recognise that unrepresented lay objectors may be less well equipped to respond than legally represented applicants. Under the old system, licences came up for renewal tri-annually and this afforded local residents a suitable opportunity to voice any concerns by objecting to the renewal. Under the new system, premises licences do not have to be renewed and local residents unhappy with the operation of licensed premises would have to take the initiative to instigate review procedures. They would also, of course, need to know how to go about doing so.

The use of conditions and undertakings is offered as a final example. Under both the old and new systems, conditions are endorsed on licences and affect the way in which the premises are run; for example, that shatter-proof or plastic glasses be used. Upon conversion of a justices' licence to a premises licence, any such conditions would be carried over. Undertakings performed a similar role to conditions, but were not legally binding. However, such undertakings were observed, for to renege on an undertaking would be evidence that a licensee was not a fit person to hold a licence. It was also the case that, since conditions could not be placed on an off-licence (due to an oversight when the 1964 Act was passed), undertakings on off-licences were common; for example, that spirits are to be kept behind the counter (to avoid theft), that a CCTV system be utilised, and that blinds are to be used to cover the alcohol outside of licensed hours. Undertakings would often be used to overcome local residents' objections to both on- and off-licence applications. They would sometimes even be used, in the case of off-licences, to restrict the opening hours to less than permitted hours if there was evidence of 'youth problems' in the area of the shop. However, undertakings are not carried over onto a converted premises licence and therefore are removed from the converted licences. The response to this gap is, of course, that if problems arise then proceedings can be commenced for a review of the licence.

The DCMS has stated that 152,000 of the 190,000 licensed premises had applied to convert their licences by 6th August 2005. There were 60,800 applications to vary licences (most to extend hours and/or add live/recorded music), with 30,000 subject to representations (15,000 from local residents). Official figures are not yet available for how many were refused or granted subject to conditions. A newspaper survey suggests that responses from local authorities show that 99% of applications to vary have succeeded. It states that sixty local authorities responded with figures that showed that there had been 13,765 requests for late night licences. Of these, 3,654 attracted objections from the public. However, only 40 applications had so far been turned down (*Daily Mail*, 3 September 2005). While such figures may be treated with some caution they are supported by other anecdotal evidence (see, for example, the Licensing Act Active Residents' website at www.laarn.org).

Why this should be is unclear. It may be that many more applicants than local resident objectors have been legally represented; and have engaged the services of specialist licensing lawyers, skilled in presenting such applications, and with a thorough knowledge of the new Act, guidance and regulations. Local authorities, keen to avoid costly appeals, may be demanding a level of evidence that is beyond the capacity of objectors to provide. For example, an objection to longer hours and live music based on noise nuisance may be dismissed as there is no evidence of current noise nuisance. Residents may say that they have not complained in the past, as being disturbed to 11 pm was bearable and something that was tolerated, but that it would not be bearable to have to endure noise to 1 am. Local authorities generally appear to have been granting such applications (perhaps with some conditions such as keeping windows closed) and putting the onus on the residents to monitor the situation and if appropriate request a review of the licence.

Official figures have yet to be published but the DCMS seems to have recognised that the new protection promised for local residents may not have materialised. On 23rd September 2005 a joint press release was issued by Culture Secretary, Tessa Jowell and licensing minister, James Purnell, who said:

We will write to every local authority in the country to spell out that there is no presumption in the Act for longer hours over the objections of local residents, and that they should therefore be confident to judge each application on its merits.
(DCMS Press Release 122/05 *Local Licensing Decision-Making Means Tougher Protection for Local People*—Jowell and Purnell)

Liberalisation

'Flexible hours'

The most significant, substantial and far-reaching reform in the 2003 Act is the abolition of 'permitted hours'. The restriction of 'permitted hours' had long been a central feature of licensing in Britain. This abolition represents much more than a continuation of the trend for extending 'opening hours', apparent in the last decades of the twentieth century. The Act is radical rather than incremental, in that it removes any general prohibition on when alcohol can be offered for sale. Instead, licensed premises will have their opening hours decided individually and endorsed as a condition on their premises licence. The aim is to allow businesses freedom of choice in how they operate their premises and to allow the public flexibility and freedom in how they spend their leisure time. The response to fears that extended hours may lead to increased alcohol-related problems is the claim that such problems will be reduced. First, it is claimed that the '11 pm swill' will be removed; the assumption being that many people try to drink as much as possible before closing time shuts off their supply. Secondly, and more importantly, it is argued that staggered closing times will avoid large numbers of customers being disgorged from premises at the same time.

The dynamics of town and city centre drinking patterns, as contributors to alcohol-related problems, were raised in a previous period of concern over alcohol-related disorder—when the 'lager lout' rather than the 'binge drinker' grabbed the headlines—in the late 1980s. Bob Purser, Director of the Coventry Alcohol Advisory Service (Purser, 1995), described how large numbers of people would converge on town and city centres at weekends. These revellers, having spent the evening at the many public houses in the area, would move, at 11 pm, on to the fewer number of premises with late night licences. At 2 am they would leave these premises and visit the smaller number of late-night food outlets. Finally, as the buses that brought them were no longer running, they would converge on the central taxi rank. This resulted in the build up of an increasing concentration of increasingly intoxicated people. These people were often fractious, frustrated and unable to get transport home. A number of measures were suggested and the idea of staggered closing times was born.

Apart from the fact that there is no reliable research to support this approach and that most bars will continue to close at the same, albeit later, time, there are two

potential problems with such a strategy. First, as has been discussed above, the approach does not take into account the adverse effects on those living in the vicinity of premises with extended hours. Secondly, and surprisingly the subject of little debate during the progress of the Licensing Bill, the strategy ignores the relationship between increased availability of alcohol and alcohol-related problems. The responses promised and the concerns recognised relate only to immediate crime and disorder issues in or around the licensed premises. The Act ignores general issues of alcohol-related harm and, in particular, public health matters. Previous debates on availability had attracted a high-profile response from the public health and welfare lobbies, but in the current debate this materialised only after the passing of the 2003 Act. By this time, the juggernaut careering towards extended hours seemed unstoppable.

Consumption theory

A public health perspective sees alcohol problems and harm as not related simply to what the relatively small groups of 'problem drinkers' or 'alcohol abusers' are doing, but to the levels of consumption in the population generally. Research suggests that when *per capita* consumption of alcohol rises, so too do all levels of alcohol-related harm (Plant *et al.*, 1997). What governs levels of consumption? It appears that the two most important factors are price and availability, which can be controlled by fiscal and licensing changes (Royal College of Physicians, 1991). Increases in taxation and restrictions on availability, by measures such as licensing controls (for example, less liberal licensing hours), should be followed by a drop in *per capita* consumption and alcohol-related harm. However, this approach has not found favour with a government that is subject to strong pressure from a powerful drink trades lobby (the drink industry is a major employer in the United Kingdom and its exports contribute substantially to the balance of payments). It is also a government that is committed to a free market economy (the price of alcoholic drinks have, in real terms, and in relation to average income, been allowed to fall over the years) and more flexible licensing laws. Finally, it is a government that is in receipt of high levels of revenue from duties on alcohol (some £9 billion per year).

Licensing control

Over the years, licensing provisions have sought to regulate various aspects of the sale and supply of alcohol. Central to this enterprise have been measures aimed at controlling availability. Three broad types of restriction have been adopted. First, the imposition of an age requirement for the purchase of alcohol has recognised that young people need special measures to protect them from alcohol-related harm (and that society may need protection from the problems caused by inebriated young people). Secondly, measures that prescribe the hours during which alcohol can be made available have been imposed for moral ('Sunday closing'), instrumental (First World War munitions workers) and harm reduction reasons. The last of these, clearly of widest interest, links consumption to availability, availability to opening hours and levels of consumption to levels of alcohol-related harm.

The third type of restriction aimed at controlling the availability of alcohol is the concept of 'need' or 'demand'. This has been used as a justification for restricting the number of premises granted licences to sell or supply alcohol. As with licensed hours, the rationale is that consumption is affected by availability, which is linked to the number of outlets, and that levels of consumption are related to levels of alcohol-related harm.

'Need'

The latest liberalising phase, first apparent in the 1960s, gathered pace through the remainder of the twentieth century. It was to see significant developments to each of the three mechanisms used to control the availability of alcohol, particularly in relation to hours and 'need'. 'Permitted hours' were extended, with the removal of the 'dry afternoon' (excepting Christmas Day). This relaxation reached its climax with round-the-clock, 36-hour opening of licensed premises for the millennium celebrations (and for subsequent 'new years').

More significant was the effective abolition of the need criterion. The Licensing Act 1964 had simply provided that a liquor licence could be granted to a 'fit and proper person' and, in the case of on-licensed premises, for premises that were suitable for the purpose. Beyond this, licensing justices enjoyed an absolute discretion. To assist in the exercise of this discretion, licensing committees developed local policies. Almost all adopted the need or demand criterion. However, it is worth noting that 'The policy of restricting the number of retail outlets for intoxicating liquor to the minimum regarded as necessary for the legitimate needs of the population is older than the licensing law itself, although its application by the licensing authorities, and its overt support by central government has varied considerably from time to time' (Home Office 1972, para. 14, p. 295).

Historically, liquor licensing has moved through successive periods of liberalisation and control. Simply put, alcohol-related problems have led to increased restrictions, while social and commercial pressures produce relaxation of controls. Examples of the former occurred in the 1780s and 1880s (led by campaigns against vice and immorality), while examples of social pressures can be seen in the seventeenth century (the gin trade) and the swinging sixties. In the 1990s, strong pressure for liberalisation came from the drinks trade and tourism industry and was helped along by an increasingly sophisticated body of licensing practitioners. Despite the failure of the Erroll report in 1972 to introduce reform (defeated mainly by strong opposition from the public health lobby), a piecemeal process of deregulation has seen the introduction of a number of reforms go largely unnoticed and unopposed.

Among these reforms was the scrapping, in 1996, of the concept of need. This was recommended by a Home Office Working Group set up to consider methods of licence transfers that was asked also to look at the question of need:

Summarising the arguments as, on the one hand, need or over-provision being better left to market forces against, on the other, over-concentration in popular locations leading to risk of public order problems or to public safety, together with

promotional practices encouraging excessive consumption in order to survive (the Group concluded) that the realities of business finance would mean the latter would be rare. (Light & Heenan, 1999)

The way was open for virtually unlimited expansion in the number of licensed premises. The limiting factor would now be commercial competition. The rather naive suggestion being that if there was no need or demand for the extra premises they would be uneconomical and would close. This did not happen. Instead, consumption rose, driven by advertising, the fostering of a 'binge drinking' culture and the proliferation of drinks promotions such as 'happy hours' and 'all you can drink for £10'. Premises and operating policies were redesigned to facilitate increased sales. Bar areas were opened up and furniture removed so as better to accommodate the MVVD (male volume vertical drinker). Expansion of the licensed trade fitted well with the desire of local authorities to regenerate town and city centres. The number of large capacity and late night licences expanded dramatically. Concern was mounting over the results—termed 'binge drinking' by the media.

The government review of licensing had been announced in 1998 and the Licensing Act 2003 followed. However, the intervening period saw a striking change in the licensing landscape. The pendulum had swung against liberalisation and, in effect, against the Act. This has been reflected in the intervention of the Home Office, the media frenzy generated by the prospect of 24-hour licensing and the proliferation of commentators warning of the adverse effects of liberalisation. The latest of these, at the time of writing, being Scotland Yard warning of an impending increase in murder, rape, physical assault, domestic violence and drink-driving (*Sunday Times*, 11th September 2005). Also, the results of a Populus poll conducted for *The Times* (6th September, 2005) show that 52% of men and 71% of women oppose the changes in the licensing laws, with only young men aged 18–24 being in favour by 51%.

Summary

The Act introduced much needed reform of the licensing system in England and Wales. It simplified the structure and rationalised the procedures. However, the move to local authority control is proving problematic, particularly for the smaller authorities without adequate resources. This may be a short-term situation that will smooth out once the new system has had time to bed in and those that use it have become familiar with its operation. It seems inevitable that increased funding will be needed and it looks as though this will come from local council tax payers. (The Local Government Association has predicted a shortfall of £20 to £30 million for each of the next two years—LGA Press Release 006/05 *Key Concessions on licensing but concerns remain.*)

It is true to say that false expectations were raised in the minds of licence holders about cost and simplification and that the transitional process has proved to be convoluted and expensive. Several thousand premises have not applied for premises licences and will be unable to trade (or will trade illegally) from 24 November. The justices have been deprived of a responsibility that they were generally performing

well, while local authorities have had to learn and respond to complex new duties that they did not want and for which there was no advanced funding. They appear to have coped remarkably well with the huge volume of work that was generated towards the end of the transitional period, but most authorities still have hundreds of appeals that are waiting to be heard.

The government heralded the Bill as aiming 'for a more civilised and responsible culture in the country's pubs, bars and restaurants ... (and as) ... a key plank of the government's drive to cut down on crime and anti-social behaviour' (Downing Street press release, 29th November 2003). Whether the legislation can achieve these aims remains to be seen. What is apparent is that the real effect of the increased flexibility in hours may not be the introduction of 'staggered closing times' but to move the closing time for public houses from 11 pm to midnight in the week and to 1 am on Fridays and Saturdays. Those who live in the vicinity of these premises are concerned for the future and feel that they have not received the increased protection promised for local residents. ('A licence to spread dread in the village' *Sunday Times*, 11th September 2005). There is also the risk that even if hours are staggered, large numbers of people will move from premises to premises chasing the later opening times. The largest concern must be that, as the police clamp down on town and city centre problems and areas become designated as 'cumulative impact areas' (where there is a presumption against the grant of any new premises licences) and perhaps even the proposed 'alcohol disorder zones' (where premises have to pay for policing costs), revellers will realise that they no longer have to visit town and city centres for late night opening and the binge drinking phenomenon will spread out to late night premises in the shires and suburbs. There may be one coming near you soon.

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