

Licensing Act 2003: A Lopsided Policy

*The need to incorporate a health objective in
local licensing decisions*

An Alcohol Concern Briefing

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1. Introduction

The Licensing Act 2003 came into effect in November 2005 and placed alcohol, entertainment and late-night refreshment house licensing under local authority control for the first time. Its four objectives were to: *prevent crime and disorder; promote public safety; prevent public nuisance* and *protect children from harm*. Alcohol Concern does not disagree with the extension of licensing hours per se, but we do have some outstanding reservations about how the licensing reforms operate in practice and serious misgivings about the extent to which the Act has changed drinking culture as intended.

The first part of this paper analyses the latest evidence we have on the impact of the Act. It finds, in common with other recent research projects that any changes that can be attributed to the Act have been quite modest. The second deals with the way it has been implemented locally. The final section makes an argument for incorporating a health objective into the Act.

Alcohol policy over the past ten years has been dominated by debates about how to reduce alcohol-related crime and disorder. While Alcohol Concern supports the *aims* of the Licensing Act 2003 our review finds a policy dangerously tilted towards the needs of the drinks industry, both in terms of the latitude it allows license holders during the review process, the generosity of the revised fee system and the structural disadvantaging of individual residents within the complaints procedure. To redress this we propose a number of key changes, some simply to the guidance issued by the DCMS and some to the Act itself.

2. The first two years of the Licensing Act 2003

Critics of the Act dismiss the notion that staggered closing times will fundamentally change hazardous drinking patterns. They argue that the culture of 'binge' is entrenched and that the changes will simply draw more scarce resources into the policing of urban centres at night. To support of their claims they cite a number of international studies that suggest liberalised drinking laws result in more alcohol-related problems. For example, Iceland, which abolished hour restrictions between 1999 and 2000 saw a 34% rise in alcohol-related violence and an 80% increase in drink driving. Restrictions were quickly reintroduced. (Ragnarsdottir et al., 2003).

Scotland, which liberalised its own drinking laws in 1976, also witnessed a rise in alcohol-related injuries and offences from that point. (Ellmers, 2003)

In England, most of the fears expressed in the run up to the Act's promulgation (notably that it would lead to '24 hour' drinking') have not been realised. At the same time, has there been no dramatic decline in the overall volume of crime and disorder or a visible change in drinking culture, as the Act intended. Significantly, a recent survey of licensing professionals by the University of Middlesex found that sixty six percent do not expect licensing reforms to lead to a more continental style of public drinking. Among the reasons they cited was the normalisation of binge drinking among young people, a lack of restaurants, coffee shops and other alternatives, unsuitable weather and urban environments that weren't suited for 'civilised' outdoor drinking because of, among other things, narrow pavements. (Foster et al, 2008).

The best available evidence about alcohol-related crime and disorder trends comes from four sources. These are, the British Crime Survey, a Home Office survey of 30 police forces (Babb, 2007), a large scale survey of A&E admissions linked to violence (Sivarajasingam et al., 2007) and an in depth case study analysis of five English towns (Home Office, 2008). The British Crime Survey does not reveal any statistically significant changes- violence committed by strangers, by acquaintances and domestic violence all show some small fluctuations as part of broader trends that well predate the 2005 reforms.

The Home Office police survey provides more relevant data. Forces were asked to record crime figures that occurred around licensed premises 12 months before and after the Act's implementation. There seems to have little change in offending rates overall, with a 1% rise in offences between 6:00pm and 6:00 am, though notably there was a 22% rise in the numbers of offences occurring between 3:00am and 6:00am in December 2005, suggesting that with higher numbers of people on the street later than usual, some violent incidents have merely been displaced to later times. It will be important over the long term to check if this represents the beginning of a trend as it has obvious implications for police resources.

The Accident & Emergency survey covered 44,000 admissions across 33 casualty departments in England and Wales. It found a 2% fall in attendances between 2005 and 2006. The decline is probably too small to attribute to the Licensing Act. However, recent research has cast doubt on the applicability of alcohol-related A&E data due to differing monitoring techniques across different hospitals, making assertions about the impact of the Act on A&E admissions very difficult (Patton 2007).

It is interesting to note that the towns (Guildford, Nottingham, Croydon, Birmingham, and Blackpool) featured in the Home Office case study largely confirm the national data trends on violence. In 3 out of 5 of the case studies recorded violent crime increased, but only by small percentages (Home Office, 2008)

The indicators for 'the public safety and 'public nuisance objectives are equally inconclusive. The Road Casualty Report from the Department for Transport shows a 4% fall in the number of serious casualties and fatalities from drink driving accidents. Fatalities have fallen by 7%. Slight injuries also fell by 7% (Dtf, 2007). However,

there is no evidence to suggest that these declines are attributable to the Licensing Act. The best source data on people's perceptions of alcohol-related crime and disorder comes from the British Crime Survey's NTE module. Just over a quarter (26%) of people thought that public drunkenness was an important problem in their area. A large majority (66%) thought that noise caused by drunken people was a problem and 48% complained about fighting as being a problem. However, these figures do not represent a sizeable increase from 2005/6 and suggests that the Act has not substantially improved local residents' quality of life.

In conclusion, the overall indicators suggest that the Act has not made a sizeable dent in the incidences of alcohol-related crime or disorder, nor has the general public reported an identifiable change of 'tone' in areas with sizeable night time economies. There are two possible explanations. The first is that it may be that it is simply too early to evaluate whether the Act will have a profound impact on night-life in England: 'culture' change is a long term project and we may have to simply have to wait. The second is that people's disposable income is often fixed and increased hours have not persuaded them to necessarily drink more. Instead, it may have simply changed the *time* at which they drink- this may also explain the temporal displacement in alcohol-related violence evidenced by the Home Office police survey.

3. Problems associated with implementation

Drawing on two surveys of licensing professionals and a DCMS review of funding arrangements Alcohol Concern has identified a number of operational problems that may subvert the intentions of the Act and need urgent attention. These are: public reticence to participate in the licensing process; an unfair cost burden, and an appeals procedure that disproportionately favours problem venues.

Public involvement

One of the greatest advantages of shifting licensing from magistrates to local authorities was the opportunity it offered for decision making to be made more accountable and transparent, and to ensure that the needs of the night time economy were balanced against quality of life concerns for local residents. To aid this, the Act allows for local residents, or other concerned stakeholders (such as the police) to make 'representations' when a licensing application is lodged.

An Alcohol Concern survey carried out in 2006 asked license authorities how they had made the public aware of their rights to make representations and seek reviews. By far, the commonest response was via the local authority website. Although a wide range of other methods were identified (local media, leaflets, road shows etc) these were only pursued by a few authorities. It is a matter of some concern that some authorities have missed the opportunity to consult more widely and over relied on website information as a means of consultation (Alcohol Concern 2006).

In a focus group study carried out by Alcohol Concern of Licensing Officers it was also agreed that people from more socially disadvantaged areas are less likely and, probably less able to make representations or seek reviews. Enfield demonstrated this pattern very clearly with a marked difference in the number of representations

between the more and less affluent areas (Alcohol Concern, 2006). Residents are also unlikely to challenge licensing authority decisions in Magistrates Court for fear of having to bear costs if their petition fails. This is bound to discourage residents from challenging licensing decisions as few individuals will be prepared to bear the financial risk. Moreover, according to the Middlesex University survey, only 10% of licensing authorities have local pressure groups concerned with licensing issues, further reducing the opportunity for residents to launch appeals by pooling resources (Foster et al, 2008). It appears the Act has not thus far given residents the powers or influence originally envisaged and few hearings are initiated and followed through by residents, particularly those in less affluent areas.

The true cost of running a licensing regime

The Licensing Act 2003 mandates the Secretary of State for Culture, Media and Sport to set fees centrally. The fees regime is based on what the government claims is the sum required to cover the costs of administering the regime. However, the 2007 Elton review into fees levels estimates that for the three year period 2004/05 to 2006/07 local authorities will have reported licensing losses of £97 million (Elton, et al, 2007). The enquiry found that spending differed widely, with 15% of authorities covering their costs from existing fee income in full. Significantly, in authorities with lower costs, there were generally fewer appeals and hearings while authorities with higher costs reported higher numbers of hearings and higher levels of inspection and enforcement action (Elton, et al, 2007). To date, the government does not cover any shortfalls. This means that local authorities committed to robust enforcement of the Act will either have to meet any additional enforcement costs themselves or reduce the numbers of reviews and enforcement actions they undertake (ALG, 2005). This appears to offer a perverse incentive for local authorities to avoid hearings in order to keep costs down

The new system is based on the rateable value of the premises as a whole, rather than the rateable value of the part of the premises selling alcohol with a cap of £635. The £635 cap means that major venues which *do* cause problems, such as late night clubs pay substantially less than they did in the past, with fees slashed by 90% in some cases (ALG, 2005). This is because the new fees regime places the main burden of fees onto premises which have a high rateable value, such as theatres, department stores or museums, i.e. premises unlikely to pose problems. For example, in the London borough of Camden, the *Dominion* theatre could pay considerably more than *Canvas* despite the latter being a nightclub open until 3:00am.

To counteract this cross subsidy, the government included a 'multiplier' for premises in the highest rateable bands (D and E alone) whose main business was the sale of alcohol. Unfortunately, this means the multiplier is effectively only applied to premises in town and city centres, where rents are higher, thus largely excluding suburban vertical drinking establishments and night clubs. Moreover, the Elton review found that authorities were often stymied by differing interpretations of the legal definition of when the multiplier should be applied. The result is that only half of all premises liable for the multiplier have had it applied to them (Elton, et al, 2007)

The review and appeals process

Any responsible authority (the Police, Health and Safety, Trading Standards, Child Protection, the Fire Service and Environmental Protection) or other interested party (local residents and business people) can apply for a review of a license. There is then a 28 day window during which representations from the local community are accepted. Approximately 20 working days after this a committee hearing, normally involving three councillors takes place.

The hearing is fairly formal and it is usual for the license holder to use legal representation. The license holder has 21 days to lodge an appeal with the magistrate's court if they are unhappy with the decision (which can include modifications to the conditions of the license, suspension of the license or revocation of the license). It's important to note that licensing reviews are not fast tracked within the courts system. This means that it can be months before the evidence is actually heard, during all of which time the license holder is permitted to sell alcohol and alleged problems or irregularities cannot be addressed. Unless a statutory maximum time can be established between the lodging of an appeal to the magistrates and its hearing, the review process will continue to be only a limited disincentive to irresponsible practices.

4. Incorporating a health objective into the Act.

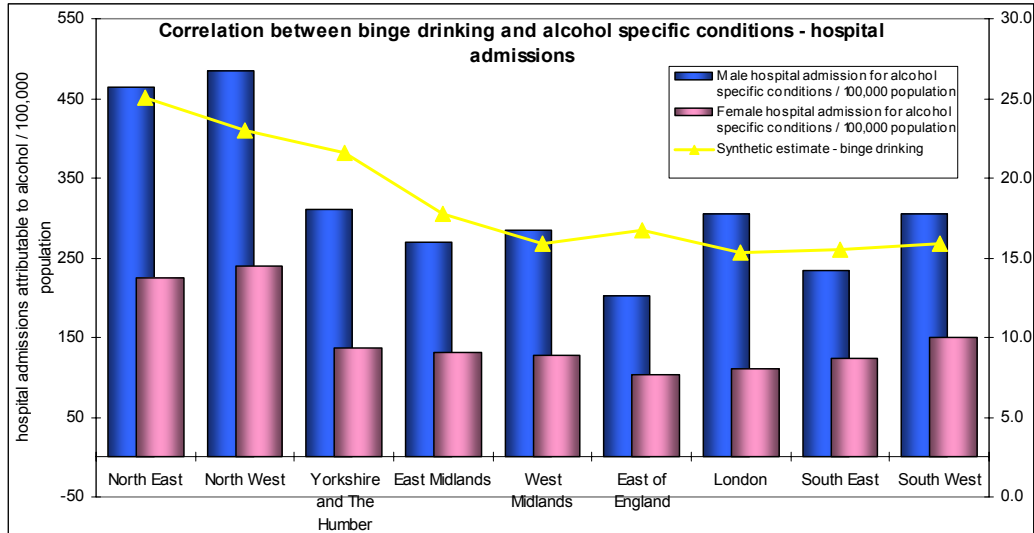
Like much Government policy on alcohol, the Licensing Act 2003 is concerned with reducing alcohol-related crime and disorder. It is only with the launch of the government's updated alcohol strategy, *Safe. Sensible. Social.* that we have seen some discussion about how to improve health by reducing drinking levels among those groups who may *quietly* be doing themselves great harm. Alcohol Concern would argue that amending the Licensing Act 2003 to take account of harmful drinking levels within local communities and related levels of alcohol-related morbidity and mortality would add substantial momentum to efforts to reduce these harms, to protect the community and redress an existing imbalance within the alcohol policy agenda.

Alcohol misuse causes an estimated 22,000 premature deaths each year and approximately 3.6% of the UK population is alcohol-dependent, which equates to 1.1 million. A significantly large number of people - 8.2 million - have an alcohol use disorder (26% of the population) and drink more than recommended guidelines, costing the UK economy £20bn

Government has issued several documents under its national alcohol strategy intended to reduce health harms in relation to alcohol misuse. The publications of *Models of Care for Alcohol Misuse*, the *Alcohol Needs Assessment Research Programme* and the *Screening Research Programme* (SIPs) have been positive steps. However, a lack of any resourced or strategic approach across public health to tackling health harms has contributed to a 178% increase in alcoholic liver cirrhosis in 9 years.

Figure 1 shows a synthetic estimate for binge drinking that suggests a relationship between alcohol-related hospital admissions and binge drinking. In most regions, where there are high levels of binge drinking there are also high levels of alcohol related health problems.

Figure 1



NWPHO using data from Hospital Episode Statistics (HES; www.dh.gov.uk), and population data from Office for National Statistics (www.statistics.gov.uk)

Incorporating a public health objective into the Act, to protect the community's health, would bring a greater coherence to the government's programme to reduce alcohol-related harms. The Departments of Health and Home Affairs are currently reviewing the impact of sale practices on alcohol-related harm levels and the impact of pricing and promotion with a view to legislation that would bring about greater accountability on the part of the drinks industry.

Yet the Licensing Act 2003 is currently the main statutory instrument through which good practice among drinks sellers is expected. A public health objective within the Act with the collection of robust health data would allow local authorities to judge the impact of the on and off-trades on local residents' health, and therefore provide them with a legal opportunity to maintain license levels (outlets and hours) steady, as well as provide an additional lever where crime and disorder concerns are difficult to link to particular venues. This already occurs in Scotland, where the Licensing (Scotland) Act 2005 includes the protection and promotion of public health as a primary objective.

Much of the legislative infrastructure to allow the Act to improve public health already exists. A saturation zone can be declared by a local authority where the concentration of licensed premises in an area is leading to problems (of crime and disorder). Once declared, although licensees can apply, the assumption will be that no new licences will be granted in that area. The University of Middlesex report a clear reluctance on the part of licensing authorities with only 17% of authorities having created such a zone following a cumulative impact assessment. Notably, the fewest numbers (13% and 7%) of saturation zones were in the North West and North

East regions respectively-areas that demonstrate the highest incidences of alcohol-related health harms (Foster et al, 2008; Bellis, et al 2007). The experience of cities such as Leeds, Newcastle and Manchester suggest that there are major benefits to developing night-time leisure activities. However, urban regeneration depends upon a balance being struck between the needs and interests of different groups and the activities that take place in city centres. A health objective within the Act, coupled with the powers allowing saturation zones would enable local authorities to more carefully balance the well being of local residents against the broader needs of the night time economy.

5. Conclusions and recommendations

In summary, while Alcohol Concern supports the *aims* of the Licensing Act 2003 to pass control over licensing decisions to local authorities, our review finds a policy dangerously tilted towards the needs of the drinks industry, both in terms of the latitude it allows license holders during the review process, the generosity of the rateable fee system and the structural disadvantaging of individual residents within the complaints procedure. To redress this we propose a number of key changes, some simply to the guidance issued by the DCMS and some to the Act itself:

- 1) The Licensing Act 2003 should be amended to include a public health objective that informs decisions about licensing applications, reviews and cumulative impact zones. Licensing authorities should have access to a nationally standardized collection of A&E, ambulance, hospital admissions and treatment data. This would allow local authorities the power to refuse additional licenses or extensions if local alcohol-related health harms were rising or a matter of grave concern.
- 2) A maximum time should be stipulated between the lodging of an appeal at the magistrates and its hearing to prevent the process from taking a disproportionately long time, thus allowing an irresponsible license holder to continue trading without penalty.
- 3) The legal definition of when the multiplier charge can be applied should be extended to include large capacity drinks venues outside city centres as well as within. The provisions should also be strengthened to remove any ambiguities, and better guidance provided to local authorities.
- 4) Work is required to ensure that all sections of the community are empowered to tackle alcohol-related harms by raising awareness of residents' rights to seek reviews and make representations. Particular work is required to facilitate the inclusion of less socially advantaged groups. This should include the development of a nationally delivered leaflet to all residents on how to make representations and seek reviews.
- 5) The DCMS should instruct all local authorities to set aside a proportion of their licensing budget to subsidise the reasonable legal costs of residents demanding a licensing review.

6. About Alcohol Concern

Alcohol Concern is the national voluntary agency on alcohol misuse. We work to reduce the incidence and costs of alcohol-related harm and to increase the range and quality of services available to people with alcohol-related problems. We provide information and encourage debate on the wide range of public policy issues affected by alcohol; including public health, housing, children and families, crime and licensing. We support specialist and non-specialist service providers in tackling alcohol problems at a local level, whilst also working to influence national alcohol policy

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