

Proposed changes to the liquor licensing legislation to extend permitted hours on Friday and Saturday night

Summary

Since the Institute of Alcohol Studies is concerned with the prevention of alcohol-related problems, we regard the Government's proposals as unacceptable for, if implemented, they are likely to increase alcohol problems in both the short and the long term.

The Consultation Paper fails to make any case for longer drinking hours which would, of course, entail explaining why previous Ministerial statements and Government policy were mistaken or, alternatively, rendered obsolete by social change. (Section 4)

The Government's stated proposals are, of course, for only a relatively small extension of drinking hours, and we do not argue that such a change would of itself have hugely adverse effects in relation to overall levels of alcohol abuse. However, we believe that these proposals represent another step in the entrenchment of heavy drinking in society as well as possibly having direct adverse effects in particular localities and on local residents. The adverse effects on local residents are likely to be particularly evident where the premises concerned have a restaurant licence, and when closing time will not be midnight but approaching 1.30am. (Section 4)

In relation to alcohol abuse, the Government's preferred strategy is to target heavy drinkers. There is therefore some irony in the present proposals as they are clearly a means of targeting heavy drinkers but in order to facilitate additional heavy drinking. (Section 3)

Moreover, the new proposals must be seen in the context of other changes on which the Government is already embarked, or which it is clearly considering, the cumulative effects of which are likely to increase problems of alcohol abuse.

In any case, recent history provides little reason for regarding as credible any assurances regarding the limited nature of the proposed changes. The Consultation Paper on the 1988 Licensing Act explicitly ruled out the introduction of Children's Certificates, which have of course been in operation since early 1995. The Conservative Manifesto of 1987 contained the assurance that "we will keep a sensible limit on late night opening", and throughout the debates on the subsequent

Licensing Act, Government Ministers stated repeatedly that the 'sensible limit' was, indeed, 11pm. There is no good reason to assume, therefore, that the changes currently proposed will, in the event, be restricted to just one extra hour on Friday and Saturday nights.

If longer drinking hours are to be allowed, then we believe Option 3 provides the most satisfactory safeguards for the public and should therefore be chosen as the method of implementing the proposals. (Section 5)

1 The Recent History

We regret that the Consultation Paper seeks to perpetuate the myth that "The current pattern of permitted hours originates from the First World War to prevent drunkenness among munition workers", adding that this pattern cannot be considered a satisfactory basis for policy in the 1990's.

In reality, as the Consultation Paper then concedes, the current permitted hours which it is now intended to modify were set by the 1988 Licensing Act, and it is misleading to describe this Act wholly in terms of 'relaxation'. In relation to underage drinking and late night extensions, the 1988 Act, far from relaxing the law, actually tightened the restrictions, measures that were regarded then, as now, as appropriate policies for the 1990's.

1.3 Indeed, following the 1988 Act, the Home Office sent a Circular to the courts, licensing justices and police, commenting on the link between heavy drinking and public disorder and drawing their attention to the additional powers given by the Act to control late night extensions precisely in order to reduce problems of public disorder. A similar circular was sent to the licensing authorities in Scotland.

2 The Purpose of Licensing

2.1 We are glad that the details of the Government's proposals are preceded by an explanation of its underlying philosophy in these matters, but are greatly concerned that this philosophy appears to be based on a very narrow and restrictive concept of the functions of liquor licensing.

The crucial statement reads:

"The Government believes that people should be allowed to spend their leisure time as they wish, provided they do not unreasonably harm others' interests, and should not be prevented from doing so by unnecessary Government interference.... Where restrictions are necessary, we have to consider whether they should now operate in a more limited, targeted way, so as to control potential social problems without unnecessarily restricting the interests and tastes of the responsible majority."

2.2 There is an immediate question as to the Government's criteria of 'unreasonable' harm to others' interests, and what forms of harming the interests of others the Government regards as 'reasonable'. The main point here, however, is that we regard as highly implausible the implication of this statement that longer drinking hours on Friday and Saturday nights (or any other nights) have been demanded by, and will be made use of by, the 'responsible majority of the population'.

2.3 To our knowledge, there is no reason to believe that this is the case. On the contrary, the implementation of the Government's proposals is much more likely to result in the situation identified by the Safer Edinburgh Project Team, that extended drinking hours had gone too far, "meeting the interests of the licensed trade and a small section of the drinking public at the expense of the wider community."

confirmed by the subsequent discussion of the proposals - that in the Government's view, the only justification for restrictions is direct, immediate (and, presumably, 'unreasonable') harm or inconvenience to others, or jeopardy to the welfare of young people.

2.5 The Government thus appears to have ruled out any use of the licensing law to control the level of alcohol consumption as such; to help prevent problems in the longer term, or to signal that alcohol is a special commodity requiring special treatment.

2.6 The narrowness of this outlook is clear in comparison with that expressed by the Sheffield Licensing Committee to the Home Office in response to previous proposals for licensing reform in 1987:

"It will ...give the wrong impression if licensing controls are made to appear to be concerned only with the prevention of public nuisance and considerations of public safety and public order.....licensing controls are operated in a 'social' context (and) in the exercise of their

discretion, Licensing Justices have also to take into account local conditions and the welfare of society."

The Sheffield Justices also referred to the 'educative value' of the licensing process, a concept that clearly no longer has any place in the Government's thinking.

3 The Long Term Effects of the Proposals

3.1 In view of the Government's contraction of the issues to consideration of direct, immediate consequences for public nuisance and disorder, we restrict, with one exception, the remainder of our comments to these aspects.

3.2 The exception is the contradictory nature of the Government's proposal in relation to its other proposal (in Health of the Nation) to reduce by the year 2005 the proportions of men and women exceeding the 'sensible limits' from 28% to 18% and from 11% to 7% respectively.

Government surveys show that these targets are not being achieved: indeed, the proportion of women exceeding the sensible limit is increasing.

3.3 The contradiction arises from the near certainty that the economic viability of the extra drinking hours will depend to a considerable extent on the custom of the very drinkers whose consumption the Government would like to see reduced. The Government's own survey to evaluate the effects of the 1988 changes found that the more heavily people drank, the more likely they were to make use of the later drinking hours: 60-88% of men exceeding the 'sensible limits' reported later night drinking in pubs, compared with just 22% of 'sensible drinkers'.

One clear possibility, therefore, is that still longer drinking hours will over time encourage even greater consumption by those already exceeding the 'sensible limits', when the Government's health policy is to reduce the burden of heavy drinking.

4 The Immediate Effects of the Proposals

4.1 The adverse effects - particularly on local residents - of normal drinking hours being extended beyond 11pm have been discussed at length in licensing debates.

The reasons for not extending permitted hours beyond 11pm were stated most clearly by the then Minister of State, Mr. Douglas Hogg and Mr Favell. Mr Hogg said:

" We would certainly need to have regard to the convenience of people who live near the licensed premises and we would have to discuss anxiously the possibility of nuisance being caused to adjoining occupiers."

"The hon. Member for Wakefield (Mr. Hinchliffe) - concentrated on the problems drinking late caused to local residents. That point was also made by the Hon. Member for Dewsbury (Mrs. Taylor). I agree with both of them.

I think that local residents would have cause for complaint if, as a matter of course, drinking continued until as late as 12 o'clock, especially bearing in mind that the drinking-up procedure allows for 10 minutes extra in any event.

"I have a further point to make about the view of the police. We have taken informal soundings, particularly from the Association of Chief Police Officers, about how the police would react to a later closing hour - 12 o'clock. Their reaction was unfavourable. They felt that 11 o'clock was, broadly speaking, right for the various reasons which I have outlined and which my hon. Friend the Member for Stockport (Mr. Favell) has outlined in more detail. I do not pretend that it is a precise argument. It is a balance. We have tried to effect an hour which is likely to be the most acceptable to local residents."

Mr Favell had said that going beyond 11pm would be unacceptable because many British public houses, unlike those on the Continent, are in residential areas and the rights of those who wish to drink must be balanced against the rights of others who live in the neighbourhood.

Mr Favell also referred to a specific aspect - the restaurant licence:

"There is an additional problem - about which no doubt the Minister will be talking - that if a public house is adapted to provide food, it is entitled as a right to a restaurant licence. A restaurant licence means that people can already drink until midnight. If my hon. Friend's amendment was accepted, public houses providing food would be open until 1am. In my view, that is far too late."

Mr Hogg agreed entirely with the point made about the restaurant licence and which presumably applies to the Government's present proposals:

"My hon. Friend for Stockport is wholly right when he draws attention to the existence of the supper hour licence, or restaurant licence, as he called it. If one were to extend the closing hour to 12 o'clock, in a number of areas there would be extended drinking until 1 o'clock as a matter of course because of the effect of the supper hour or restaurant licence. I think that that in itself is undesirable."

4.2 The beneficial effects of 11pm closing were noted earlier this century when, in London in September 1914, the licensing justices changed the closing time from 12.30 am to 11pm. Allowing for the present drinking-up time of 20 minutes, the 12.30am closing time is comparable to what the situation will be if the Government's proposals are implemented.

"A transformation of the night scenes of London has followed the closing of the public house at 11 o'clock The police instead of having to move on numbers of people who have been dislodged from bars at 12.30 at night, found very little intoxication to deal with, the last hour and a half being responsible for much of the excess of which complaint is made."

4.3 It is worth noting that this comment was not made by any individual or organisation with 'anti-alcohol' views: it was contained in an editorial in the Brewers' Gazette.

Similarly, testimony to the beneficial effects of 11pm closing was given by Sir Edgar Saunders, director of the Brewers' Society, in evidence to the Royal Commission on Liquor Licensing in 1931. He said:

"The earlier closing hour has been a reform of the first magnitude for the whole country. The last hour of the evening is always the worst ... to get the streets cleared at an hour earlier than used to be the case has been of enormous benefit."

Cecil Lubbock of the London Brewers' Society, also commenting on 11pm closing to the Commission, referred to:

"The enormous improvement of public manners which has taken placeNo one can go about the streets without noticing it".

4.4 It may be claimed - although it is difficult to see on what basis - that these events occurred too long ago to be relevant. Indeed, one major social change which has occurred since 1914 - the use of the motor car - has added to the possible adverse consequences of later night drinking. Extended drinking hours could have the effect of encouraging more people to go for a night out in their cars, given that public transport tends to be erratic or non-existent after midnight.

4.5 There is also the more recent experience of Edinburgh, where a reduction in alcohol-related violence and disorder emerged as one of the main priorities of the project, sponsored by the Scottish Office.

4.6 The issue of late night opening arose because with the relaxation of licensing laws in the 1970's, Edinburgh led the way in granting late night opening to licensed premises throughout the city. The liberalisation was seen as being appropriate to the needs of tourists and also to encourage in the local population a more relaxed and responsible attitude to drinking.

4.7 The Government suggests that the later closing time <I>"might help to avoid the conflict which can sometimes arise when large numbers of people leave public houses at the same time, as the longer the period during which customers may engage in and finish their drinking, the more varied and dispersed the times of their departure are likely to be."

4.8 This optimistic assumption should be contrasted with the reality of the situation of post-liberalisation Scotland as indicated by the 1988 circular. This stated:

"From recent representations to the Secretary of State it is clear that, in a number of licensing board areas, the proliferation of regular late night extensions is causing difficulty and distress to local residents and to police in the maintenance of order in the early hours of the morning out of all proportion to any benefit the community may derive from the grant of such extensions."

4.9 The consequence of the liberalisation in Edinburgh was therefore that the policing of the city became more, not less, difficult, as the lack of a uniform closing time resulted in numbers of people wandering homewards through the city centre streets throughout the night. The random incidents that occurred in consequence meant that police resources became overstretched, regularly having to be diverted from

the dedicated 'high visibility' patrolling that was intended to maintain public order.

4.10 The Safer Edinburgh Project Team came to the conclusion that liberalisation had gone too far, 'meeting the interests of the licensed trade and a small section of the drinking public at the expense of the wider community.'

This view was shared by the police, environmental health bodies, local crime prevention panels, residents associations etc. and the result was a successful campaign to reintroduce zone closing - earlier and uniform closing times within a specified geographical district. It is reported that since 1989 when late night opening hours began to be reduced there has been a 30% reduction in drink-related violence and disorder.

4.11 In summary, our conclusions are as follows:

i. The Consultation Paper states that "it is now time to consider a relatively modest change to weekend opening hours for public houses and clubs".

However, no reason is given for believing that the Government's previous policy in regard to the benefits of 11pm closing, particularly in relation to the needs of local residents, was incorrect, nor, alternatively, is there any indication in the Paper of what changes in social conditions are held to have occurred since 1988 which have rendered previous Government policy obsolete, though only apparently, in relation to Friday and Saturday nights.

ii. There is no good reason to believe that extended drinking hours will have beneficial consequences in relation to crime, public disorder and public nuisance. The available evidence suggests the opposite. Particularly in city centres, extending the licensing hours as proposed for both pubs and clubs, and also taking restaurant licences and drinking-up time into account, is likely to result in precisely the problems that the city of Edinburgh has had to overcome.

iii. Bearing these considerations in mind, the conclusion is unavoidable that a Government which took its responsibilities seriously in regard to law and order, especially in the city centres; in regard to the rights of local residents to be protected

from disturbance at unreasonable hours, and in regard to the implications of its own policy on alcohol abuse, would not be contemplating the present proposals.

5 Necessary Protection

5.1 We are glad that the Consultation Paper provides alternative options for the implementation of the proposals. However, the very fact that these alternatives are put forward in the context of the need for 'continued protection of the public' itself concedes the potential threat of the proposals to the public welfare.

5.2 In our view, if extra hours are to be granted, the need for continued protection of the public, especially local residents, should take priority in relation to these alternative options over the wishes of the licensed trade and the minority of the population who will make use of the extra hours.

5.3 On this basis, Option 3 is, in our view, to be favoured. We accept that this Option would impose additional burdens on licensees and the courts, but we believe that taking everything into account, Option 3 has the most to recommend it. Our reasons for favouring this Option are as follows:

- i. We agree entirely with previous Government policy as expressed by Mr Hogg, that local residents would indeed have cause for complaint if as a matter of course public houses and clubs remained open on Friday and Saturday nights until as late as 12 o'clock (or 3am for clubs), especially bearing in mind the effects of the restaurant licence and that the drinking up procedure now allows for 20 minutes extra in any case. Thus for people living in the vicinity of a public house with a restaurant licence, any noise and disturbance would not end at midnight - it could continue until 1.30am.
- ii. Option 3 would at least place the onus on licensees and club secretaries to convince the licensing justices that extra drinking hours were desirable, rather than on local residents and others (including the justices themselves) to show that the extra hours were undesirable.

iii. The drawback with Option 1 is that, in practice, this would require persistent public order problems and/or disturbance already to have occurred or to be occurring before local residents or others could take any action to protect themselves.

iv. In contrast, the drawbacks of Option 2 are that it would not only limit the discretion of licensing justices, it would also require them to be able to present evidence in advance that disturbance or annoyance would arise from extended hours being granted. Moreover, the justices would have to be able to present evidence not just that public order problems or nuisance could be a general consequence of extended drinking hours, but that the problems would relate to particular premises. Clearly, such evidence might not be available, but in its absence, a decision to refuse the application would either not be made or, if made, be highly vulnerable to appeal. This Option could therefore have the result of undermining the licensing justices' ability to implement a coherent policy for a district as a whole.

v. Also in regard to Option 2, we do not consider it necessary for the reasons for a refusal to grant an application to be given in writing. We agree here with the former Minister of State, Home Office (Mr. - now Lord Waddington) who during consideration of a similar measure in a previous licensing bill, explained that written reasons for refusals are unnecessary "because it would be highly unusual for an applicant to be unaware of the reasons for the refusal of his application." The minister continued:

"The unsuccessful applicant will be able to ascertain the reasons, even if they are not made known at the time, by making inquiries after the event. I see no reason to include in the Bill provisions which do not appear in the Licensing Act 1964 about applications for licences and authorisations. Licensing legislation has been on the statute book for years and it has never been thought necessary to have a specific provision to say that reasons for refusal of the licence should be stated. That is because if anybody asks for the reasons they must be stated."

References

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- 5 Health of the Nation. Dept of Health 1992.
- 6 Living in Britain: Results from the General Household Survey. OPCS HMSO 1996.
- 7 E Goddard - Drinking in England and Wales in the Late 1980s. OPCS HMSO 1991.
- 8 Official Report. Standing Committee H. Licensing Bill. Thursday 19 November 1987.
- 9 Hansard Standing Committee C. Licensing (Amendment) Bill. Wednesday 8 April 1987.