



Your Ref:

Our Ref: RS/12

Date: 26 February 2007

Being dealt with by: G Donnelly

Email:

Department of Social Development
Liquor Review Team
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Dear Sir

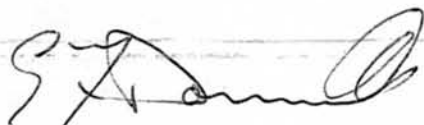
RE: Draft Licensing & Registration of Clubs (Amendment) (Northern Ireland) Order 2007

I refer to the Consultation Draft Legislation entitled, "The Licensing and Registration of Clubs (Amendment)(NI) Order 2007" and would advise as follows.

Omagh District Council's comments in the response (copy enclosed), which was submitted to your department in relation to the Review of Liquor Licensing Law in Northern Ireland (Consultation document dated October 2005) are still relevant at this stage.

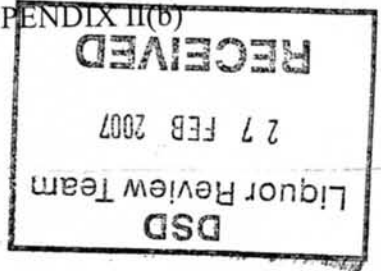
If you require further information please contact the undersigned.

Yours sincerely



G F Donnelly
Client Services Officer

Enc



LIQUOR LICENSING - THE WAY FORWARD

Government Proposals to Reform Liquor Licensing Law in Northern Ireland - Consultation Document, October 2005

Omagh District Council welcomes the opportunity to respond to the consultation document and to consider the proposed changes.

The situation in Northern Ireland is also different to the position in Great Britain and, therefore, it is felt that any changes in the licensing system should be determined by local elected representatives. The Great Britain model may not be the best for Northern Ireland and care should be taken that the agenda for change in the licensing system in Northern Ireland is being driven not by demand from the local licensed trade or customers but by the British drinks industry and pub chains who see Northern Ireland as a marketing opportunity. If the system is opened up, as proposed the number of outlets will increase and opening times for licensed premises will be extended which will result in an increased consumption of alcohol.

This sort of development has led to huge problems in cities such as Nottingham and Bath. A striking example of how city centres can be turned into areas where the only nighttime activity is drinking is provided by square mile around Glasgow city centre. Twenty years ago, this area contained 24 pubs/bars; now there are 240 such premises. It will no doubt be claimed that it will be up to councils to prevent such development when it draws up its Licensing Policy Statement. However, a Licensing Policy Statement will not be law and will be open to challenge through the courts by the corporate chains. Faced with mounting legal costs, councils may be forced to abandon defence of any appeal against refusal of an application on the ground that it is contrary to its Licensing Policy.

In an article entitled "Mayhem after midnight in Party Town" (Sunday Times 3/2/02), in which he claimed that drink firms have bullied councils into allowing a night economy that wrecks city centres, Dick Hobbs, professor of sociology at Durham University wrote of the alcohol industry,

"Faced with spirited opposition from any public-spirited coalition of local government, police and residents, their legal teams descend on local magistrates. Defeat for the brewers means losing a few weeks' profits. Defeat for the local community, however, could mean a devastating blow to the public purse and a subsequent impact upon local services. Faced with this, many local authorities back off."

He concluded that the only way to restrict such development was to enforce strict planning and licensing laws to restrict the clustering of alcohol outlets.

If, as has been claimed in the consultation document, there is a requirement for more licensed premises, this could be achieved by minor adjustment to the existing system. Under the Licensing Act (NI) 1971, which contained the

surrender requirement, new licences, which would normally have required surrender of a subsisting licence, could be granted in certain circumstances to cater for new housing developments. If there is a desire to create a “café culture”, a new category of licence similar to the restaurant licence but with limitations on size of premises (with a capacity of not more than say 50 –75 persons) could be created.

The questions asked within the Consultation Document are dealt with in order as they appear within the document.

Licensing Objectives

• Are there any other objectives you feel should underpin Northern Ireland’s liquor licensing legislation?

The Council would agree largely with those proposed objectives within the document and feel that those should be taken into account in relation to any applications for licence or variation. However, it is difficult to see how the objectives of –

- Promotion of public safety;
- Prevention of crime and disorder;
- Prevention of public nuisance

will be achieved by not only extending drinking hours but facilitating an increase in availability by allowing more outlets to open.

Given that binge drinking and over consumption of alcohol, particularly by young people, is recognised as a major public health problem, the stated objective - “Promotion of public health” – does not go far enough. Public health promotion and education will not deal with the issue. The objective should be to actively work to reduce alcohol consumption to safer levels. Only limiting availability and increasing the price, particularly of off-sales, will reduce consumption.

The problem of over consumption of alcohol by young females has increased substantially in recent years. A major contributing factor in this has been the introduction of alcopops, where the flavour of the alcohol is masked and the product is made to look and taste like a soft drink and is drunk like a soft drink. In the interest of public health and consumer protection, pre-mixed cocktails should be prohibited. All alcoholic drinks should be sold as produced by the distiller or brewer at source so that consumers are fully aware of exactly what they are buying.

No mention is made of the objective “To protect social amenity and the physical environment” as contained in the Blackburn Report. The proposed opening up of the licensing system will allow the corporate chains to move in, which will lead to loss of social amenity in our city centres and do to local

neighbourhood pubs what the giant supermarket chains have done to the corner shop.

In terms of the environment, the alcohol industry generates huge volumes of waste, which ends up as litter on our streets, or in bins, commercial or domestic. Ultimately, most of it goes to landfill as bottles from bars are not sorted for recycling. Until the mid-seventies, bottles of beer and soft drinks supplied to pubs were returnable for re-use and, if being purchased to take out, were subject to payment of a deposit. In many European countries it is still the case that beer bottles, even those bought from a supermarket, are subject to deposit, redeemable on their return. If drinks and mixers were sold in deposit - return bottles, and the use of disposable containers for such products were prohibited, the amount of waste and litter in the environment would be substantially reduced (the Minister should consider the Danish system). Inevitably, the cost to the industry of administering the system would lead to an increase in the price of drinks from off-licences and thus lead to a reduction in consumption. It can be argued that by disposing of the waste at present, councils and ratepayers are subsidising the alcohol industry. Instead, the principle of "the producer pays" should apply.

Northern Ireland is a relatively small market in terms of the UK and would be ideally suited to pilot the ideas mentioned to test their effectiveness in moderating consumption and protecting the environment.

The Council would recommend that a seventh licensing objective be added:

- The prevention of licensed premises in a confined area becoming so numerous, that the granting of further premises licences will undermine the other licensing objectives.

Licensing System

• Do you agree that a new, district council administered liquor licensing system would be more effective, accessible and accountable?

This new responsibility for councils will be extremely onerous, and as the new councils will only have been established in 2009, it is considered that a longer term approach should be taken. District Councils taking over the administration of the liquor licensing system means that the trade is expected to save costs by paying lower licensing fees. Central Government will save resources by saving on court processes it will also gain from any extra excise duty generated by increased sales. Council will see their costs rise substantially, as will the police. Councils can only take on this role if, and only if, adequate resources are put in place for the administration of this function. Any of the systems built-in to the new liquor licensing regime will require a great deal more work than what is presently undertaken and for this reason it will be very expensive for Councils to carry on this task both in terms of time and resources. The document is unclear as to how these resources will be

paid for. Consequently this needs to be clarified and evaluated so the ratepayer is not left to carry the cost of this exercise and effectively end up subsidising the drinks industry.

The Council would also have a great concern about the system being introduced in two phases. In 2007, licensing will still be carried out by the courts. This means that come 2009 or when the Review of Public Administration is decided, the Councils will be handed a fait accompli in terms of premises already having been licensed (e.g. 2.00am opening) without proper and substantial input from Council at a local level. At this stage it is our understanding that this licence is for a much longer period (not defined) subject only to objection and it is very difficult for Councils to therefore restrict a licence that has previously been issued by another authority. There should be more meaningful consultation in 2007 prior to new 2.00 am licences being issued by the courts.

The Councils must be closely involved in development of any guidance that the Department will develop for a "procedurally open, fair & consistent" approach to taking this function forward.

• Which parties should be involved in the composition of a local licensing forum?

Another statutory body, which should be involved here in terms of the issue of public health and protection of children, would be the Health & Social Services sector.

• For what period do you feel Licensing Statements should remain current?

The next issue to be considered is licensing statements and as we have had no experience with this new concept, we should accept the proposal of a three year maximum period as suggested. Interim reviews may be required as necessary.

Again it is unclear as to why the local licensing forum only comes into existence in 2009. It would be the feeling of this Council that the local licensing forum should be formed in 2007 or at whatever date the department would designate to change the legislation to the new licensing system.

• We would welcome your views on the conditions that could be imposed on an Operating Plan.

Already many premises are familiar with assessment of risks, assessment for health and safety etc and other means of evaluating how their business is working and this would be a good move along the lines of those previously mentioned.

Conditions which should be applied would obviously include the hours of business, the number allowed on the premises, transport policy in terms of getting people home, policy in terms of taxis and their conduct on street during pick-ups at the premises. Another issue would be toilet availability after closing hours and one of the new areas, which licensed premises, will be faced with is the provision of smoking areas.

New legislation in relation to the prevention of smoking within licensed premises will quite strongly impact on the nuisance, which may affect local residents due to noise, and general nuisance from patrons smoking outside. This must be adequately controlled.

The use of door supervisors may well become a requirement in some premises and should be welcomed by the trade and by enforcement authorities.

• Other than the police and district councils, who should be entitled to receive written notice of an application for a liquor licence.

In terms of letting people know about an application for a liquor licence or extended hours it is proposed to continue to notify people through the local press. It has been the experience of Councils that this approach is not always successful. Written notification of an application for or variation of a liquor licence should be given to all occupiers of premises within 90 metres. This is consistent with the approach of the Planning Service.

Opening Hours

• What hours do you feel licensed premises should be entitled to remain open for the sale of alcohol?

**What premises should be eligible to apply for opening up to 2.00am?
Should this be restricted to pubs, hotels, restaurants, conference centres, higher education institutions and indoor arenas?**

It is suggested that a 2.00 am closing time will not meet any of the objectives of the liquor licensing regime, as a considerable number of patrons will be leaving pubs at that time. It is suggested that the closing time should be 1.00 am, but with flexibility built in to allow additional hours based on for example, the Licensing Statement, the Operating Plan, history of complaints and effective enforcement hours. This could facilitate longer opening by, for example, nightclubs.

Flexibility should also be allowed to enable pubs to select opening hours for major sporting or other events being broadcast outside normal opening hours.

There should also be provision for entertainment premises to open later subject to the condition that no nuisance conditions would arise as a result of patrons leaving.

• Should the restriction on bar opening in places of public entertainment (30 minutes either side of the entertainment) be eased?

Council would be of the opinion that this should be eased to one hour before the performance to facilitate the premises and the patrons. Although there is no issue of nuisance or anti-social behaviour associated with these premises, the restriction to 30 minutes after the performance should remain.

• Are you satisfied with the proposals for rights of objection to later opening by people in the vicinity of the premises?

These rights are available to people in the vicinity of the premises, the Police and local Council, which, we would feel to be appropriate. However, the time constraints on these parties receiving notification means that Council do not have sufficient time to take this matter through Council or Committee and thus only Council officers in some departments may be aware of the application. Council would propose that more time (e.g. 10 weeks Minimum) be available to allow for more detailed consideration. It is also suggested that all occupiers of premises within 90 metres of a licensed premises should receive notification of any proposal for later opening.

Children and Young People

• Do you agree that the existing restriction of 9.00pm on children in licensed premises and registered clubs should be relaxed for family events?

There are sound reasons why children should not be on licensed premises until a very late hour. It is recognized, however, that for certain family events such as weddings, birthday parties or family reunions, it often happens that children are present and that these functions may go on late.

It is suggested, therefore that the existing restriction of 9.00 pm should be extended until 10.00 pm, and that a relaxation may be granted in the case of a specific function booked in advance and in a room separate from the bar area and exclusively for that function. This is an aspect of current legislation that is ignored by a number of licensees.

Enforcement

• How do you think a tiered system of penalty points should work and what should the range of sanctions be?

In general the penalty points system would be a useful tool in any enforcement process and would certainly have considerable influence on how a premises is managed. It is suggested that the duration period of penalty

points should be 3 years and that once a prescribed total is reached, suspension/revocation of the licence should result. Clarification should be obtained on when penalty points are spent.

It is unclear from the document as to whether penalty points would apply to the personal licence or to the premises licence or to both and again how these will be registered. Perhaps they should form part of a criminal record. This is of particular concern in relation to the personal licence as the person may move between different Council areas. It would therefore be appropriate to have some central register as is with the Driving and Vehicle Licensing system at present in Northern Ireland.

Within the document it implies that stronger fines will be administered in relation to any prosecutions taken etc but at no point does it indicate what sort of levels these may be set at. As Councils are ever mindful of costs of this service it is imperative that any fines imposed due to enforcement should be recovered by Councils.

• Can you suggest other enforcement powers to act as an effective deterrent for future breaches of licensing legislation?

Councils should be responsible for the enforcement of conditions of a "premises licence" in relation to –

- Permitted use, e.g. entertainment provision;
- Occupancy;
- Noise control;
- Public safety; and
- Other matters covered at present by an entertainments licence.

Police would still enforce the law relating to the sale and supply of intoxicating liquor.

Civilian inspectors must have enforcement powers in relation to the matters mentioned above.

There would be concern over the issue of Immediate Temporary Closure Orders. Clarity must be obtained in relation to: -

- How immediate is 'immediate' and for what period is it effective?
- What are the issues, which could lead to an Immediate Temporary Closure Order?
- What is the process for issuing an order and who is authorised?
- The order remaining effective pending any subsequent appeal.

Categories of Licence

• Do you agree that the current 12 categories of premises eligible for a liquor licence are overly prescriptive and restrictive?

The present categories should be retained as they clearly define the type of licence in force.

There is agreement with the need to review the Entertainment Licensing system. This should be carried out as soon as possible. Councils would welcome the opportunity to contribute to this review.

• In your opinion, would the introduction of personal and premises licences for managers and owners improve operating standards?

The proposed dual system is welcomed, but a number of issues require clarification, viz;

- Who will be required to hold a personal licence?
- How will personal licences be administered and what assurances are there that accredited qualifications obtained are current and appropriate?
- How long is a personal licence valid for?
- Can it be removed from a licence holder?
- Will guidance be given on the number of tiers of management requiring Personal Licence in larger premises?
- Will the personal licence be premises specific?
- Will owners of several bars be required to have a personal licence for each individual premises?

Surrender

• Do you agree that the surrender provision is anti-competitive and should be abolished?

It is considered that the surrender provision is restrictive and that is to be welcomed. By being restrictive, it limits the number of Group A licensed premises and as such assists in achieving some of the objectives of the Review, viz; prevention of crime and disorder, prevention of public nuisance and protection of children from harm. Were it to be removed, it is likely there could be a proliferation of licensed premises, (especially off-sales) throughout Northern Ireland and particularly in socially deprived areas where start up costs would no longer be prohibitive.

• Do you feel the current regulatory system for registered clubs should be relaxed as proposed?

The current regulatory system should be retained.