

# **Time for Reform: Proposals for the Modernisation of Our Licensing Laws**

## **Response from the Institute of Alcohol Studies**

### **1.0 Introduction**

1.1 The Institute of Alcohol Studies is concerned with the prevention of alcohol-related problems and it is from this perspective that we approach the White Paper.

1.2 We accept that the present licensing laws are out-dated, overly complex and cumbersome and therefore in need of modernisation. We support, wholly or in part, some of the main proposals for change in regard to simplifying the licensing system, transferring responsibility for licensing matters to local authorities and strengthening the law on underage drinking.

1.3 We are concerned, however, that on a number of key issues, the White Paper is so confused and ambiguous that it is impossible to determine what the Government actually intends. It is disturbing that the Government has clearly not thought through a number of its own proposals. We are, of course, even more concerned by proposals in the White Paper which go beyond the requirement of modernisation, and which are likely to undermine rather than protect the public welfare.

1.4 The principal benefit of the proposals for the public as distinct from the alcohol and hospitality industries, is claimed to be in regard to crime and disorder, in particular, a reduction in the street crime and disorder occurring around the closing times of pubs and clubs. The first problem here is that, important though they are, crime and disorder are not the only relevant considerations. There is also, for example, the question of public health. It is not self-evident that these other considerations should necessarily be regarded as less important than street crime. This is especially so since the benefits of the White Paper's proposals in regard to street crime are in fact extremely doubtful. This is the second problem.

1.5 There has been a strong lobby pressing for many years for the delay or abolition of closing time. Those with a vested interest in selling alcohol, journalists and other self-appointed experts, have insisted that if only closing time were abolished, the English would become like the French and the Italians, the culture of drunken yobbishness that afflicts town and city centres at night and at weekends would disappear, and peace would reign on the streets. The Government has now joined the ranks of those promoting this highly simplistic solution to a complex problem, thereby almost certainly raising public expectations far beyond what can actually be achieved.

1.6 We do not believe that the present licensing hours are inscribed on tablets of stone. We have already stated our support for ending the present requirement that later drinking hours must be linked to the provision of entertainment<sup>1</sup>. Nor do we claim to be able to predict with certainty and in detail the effects of the Government's proposals. These will depend on how the changes are brought about and what else happens at the same time.

1.7 But on the basis of the available evidence, we believe the Government's proposals are a reckless gamble with the remnants of what was once justly celebrated as the English tradition of social peace and civility. We object particularly strongly to the way in which the Government promotes the case for the de-regulation of closing times by either ignoring or misrepresenting the available evidence.

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<sup>1</sup> In our response to Liquor Licensing Deregulation Consultation on Licensing Hours for Restaurants Home Office October 1999.

1.8 We regard it as highly regrettable, therefore, that the Government has scorned the opportunity provided by the task of modernising the legal framework to devise a licensing regime based on a wide-ranging social consensus and which, serving the interests of society as a whole, would be likely to last. Instead, the Government has preferred to propose a regime that will serve the interests of parts of the licensed trade and a minority of drinkers at the expense of the wider community.

1.9 For taken as a whole, the package of reforms clearly conflicts not only with public opinion but potentially also with the Government's own policies on health and crime. We believe that, despite the rhetoric contained in the White Paper, elements of the package will actually reduce the protection available to local communities. The proposals are likely therefore to reduce rather than to enhance the quality of life for the majority of people and to create more problems than they solve. For this reason they are likely to be a continuing cause of public dissatisfaction and dispute.

1.10 Moreover, as an academic commentator points out "It is likely to prove much more difficult to reintroduce licensing restrictions than it was to liberalise them if the Home Office's strategy proves to be as ineffective and damaging as the evidence suggests it will be".<sup>1</sup>

## 2.0 National Alcohol Strategy

2.1 In his Foreword to the White Paper, the Home Secretary refers to the need for the new licensing regime to be integrated into the national alcohol strategy "which takes account of health as well as crime prevention." Unfortunately, this reference to the alcohol strategy serves only to emphasise how disconnected the Government's licensing proposals are from these wider considerations.

There is no discussion in the White Paper of the possible long-term consequences of the proposals for the problem of alcohol misuse, which, inaccurately but significantly, is identified wholly with 'underage' drinking.<sup>2</sup> This restricted vision is particularly evident in the Regulatory Impact Assessment, which manages to define the objectives of the White in such a way as to exclude any reference to the medical or social consequences of adult alcohol misuse.

2.2 As far as health is concerned, following the Home Secretary's reference, there is no further mention of it in the document, other than the reference in the Regulatory Impact Assessment to poor health as a result of underage drinking. This is despite the fact that the Department of Health has recently published data showing that the health problems associated with alcohol in adults have been increasing in recent years.<sup>3</sup> These problems already place a considerable burden on the health service. Nowhere in the White Paper is there any recognition that liquor licensing may have a role to play in protecting public health. Presumably, it is not without significance that the White Paper lacks an endorsement from the Secretary of State for Health.<sup>4</sup>

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<sup>1</sup> D Colin Drummond. Editorial Addiction Number 7 July 2000.

<sup>2</sup> White Paper introduction page 7. The licensing proposals marry up with Government strategies to, inter alia, "reduce alcohol misuse (since under-age drinking can lead to life-long problems)".

<sup>3</sup> Statistics on Alcohol: 1976 Onwards. Bulletin 1999/24 October 1999. Department of Health.

<sup>4</sup> There was an exchange relevant to this issue between Mr. Donald Anderson and the then Parliamentary Secretary of State, Mr. Douglas Hogg, in relation to the Conservative Government's 1987 Licensing Bill: Licensing Bill 8 December 1987 Standing Committee H column 248. Mr Anderson: Is not the Bill an example of each Department doing its own thing, the Home Office liberalising laws, apparently in a wholly compartmentalised separation from the Department of Health? Should not the Government, in dealing with an area of this nature, take a co-ordinated approach ... and in the Bill draw the lesson that there are implications for health? Mr Hogg: If the Bill were a wholesale relaxation in licensing laws ... (Mr Anderson) would have a point...

2.3 There is no suggestion that the licensing reforms should be introduced for an experimental period or even that they be monitored in order to assess their impact on public health, alcohol misuse, or, for that matter, crime and disorder. During the debates on the 1988 Licensing Act, Labour spokesmen regarded the monitoring of the impact of licensing law changes as essential. We agree with them.<sup>1</sup>

### 3.0 Public Opinion

3.0.1 The Government is not able to justify its disregard of these issues on the grounds that its overriding responsibility is to meet the public demand for wholesale liberalisation of the licensing law, for the bulk of the population are opposed to it. A vital part of the mythology that has been constructed by the proponents of de-regulation is the claim that there exists an almost universal consensus in its favour. Obviously, the hope is to marginalise all opponents by labelling them as an unrepresentative minority of cranks and killjoys.<sup>2</sup> In reality, it is the proponents of de-regulation who are in the minority. The 'broad consensus for change' cited by the Better Regulation Task Force<sup>3</sup> in fact excludes the bulk of the population.<sup>4</sup>

### 3.1 NOP Solutions

3.1.1 In anticipation of both the licensing White Paper and the national alcohol strategy, IAS commissioned an opinion poll from NOP Solutions. The survey was of over 1800 adults aged 15 years and over using a random location sample. The sample was representative of all adults in Gt. Britain. Interviewing took place between 6 - 11 January 2000. Full copies of the NOP Solutions report have been provided to the Home Office and the Department of Health.

In regard to licensing issues, the main findings were:

- Over half (59%) of the population think that in general it would be a bad thing to extend drinking hours at night. 41% think it would be a good thing.
- There is a small majority of men (54%) in favour of extending drinking hours, but most of them do not favour extending drinking hours beyond midnight, and then only in city centre pubs. The majority of men favour keeping current closing times for pubs in residential areas.
- The small majority of men in favour of modest reform of drinking hours is more than outweighed by the much larger majorities of women against change. 71% of women think

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<sup>1</sup> For example, Mrs Ann Taylor Hansard Licensing Bill Standing Committee H 8<sup>th</sup> December 1987.

<sup>2</sup> It has to be conceded that this strategy has been extremely successful, so much so that even supposedly objective news media collaborate in promoting the mythology. In one news report, for example, the BBC informed its viewers that opposition to the relaxation of the licensing laws was expected only from "an odd alliance of religious groups and trades unions representing the nation's bar men and barmaids". Source: BBC News Online 15/12/98.

<sup>3</sup> Licensing Legislation Better Regulation Taskforce July 1998

<sup>4</sup> In the debate on the 1988 Licensing Act, a Labour MP, Mr Hinchliffe commented on how the then Conservative Government was responding not to public opinion but to another constituency when it sought to extend drinking hours: "My concern about the brewers in pulling certain strings...is supported by the fact that one of the first policy statements of the new Government related to extending drinking hours. I do not recall that that issue was ever raised with me on the doorstep during the general election ..... we see the pressure for change coming clearly from the drink industry." Licensing Bill 8 December 1987 Standing Committee H. Mrs Taylor took a similar view. She suggested that the Act was a pay off to the Brewers for their contributions to the Conservative party's election fund. Hansard Licensing Bill 27<sup>th</sup> April 1988 Standing Committee H. It would be interesting to know Mrs. Taylor's view of the origins of the present Government's proposals.

it would be a bad thing to extend drinking hours at night. Fractionally less than three-quarters of women (74%) think that in residential areas the 11pm closing time should be retained.

- Over 90% of the population think that local residents should have the right to object to late night opening by pubs and clubs.
- Over 90% of the population think that local residents should have the right to object if they think too many pubs and clubs are being opened in the area
- There are regional variations. The highest proportions of people thinking extended drinking hours would be a good thing are in Yorkshire (48%) and London (47%) television areas, the lowest in Wales and West (31%) and East Anglia (36%). In no region is there a majority in favour of extending drinking hours.
- Support for late night opening is concentrated among men, the young and heavy drinkers. 57% of women and 73 per cent of men who exceed the `sensible limits' are in favour of extending drinking hours. Over-the-limit drinkers are around twice as likely as `sensible drinkers' are to say that they intend to make use of extra drinking hours.

The survey also tested public attitudes towards reform in the direction of `continental' style licensing laws.

- 72% are in favour of retaining the present restrictions on the entry of children into the bars of licensed premises.
- 75% are against people being able to buy alcohol in restaurants except with a meal.
- 84% are against fast-food restaurants like McDonalds selling alcohol.

3.1.2 These results clearly indicate that the public have a number of concerns regarding licensing law reform to which the Government should pay attention. It would have been greatly preferable, in our view, if the Government had made some attempt to gauge public opinion before formulating its plans, rather than embarking on what appears to be a half-hearted consultation process of uncertain status only after the plans have already been drawn up.

#### **4.0 The Social Context of Liquor Licensing Reform**

The prospect of radical licensing reform occurs at a time when levels of alcohol consumption and alcohol-related harm are already high, and rising.<sup>1</sup>

##### **4.1 Consumption**

4.1.1 After a period of relative stability, per capita alcohol consumption is again rising to historically high levels. Taking unrecorded as well as recorded consumption into account, adult consumption in 1998/9 was probably higher than at any time since the First World War.

4.1.2 The proportion of children who drink has increased. In 1986, over a quarter of 11-15 year olds had drunk in the previous week compared with 1 in 5 in 1988. The level of consumption has also increased in this age group. Between 1990 and 1996, the average amount drunk by 11-15 year olds doubled.

4.1.3 Among adults, the heaviest drinkers are the 16 -24 age group in both men and women. Overall, more than a quarter of men (27%), and 14% of women exceed the old `sensible limits'

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<sup>1</sup> Statistics on Alcohol: 1976 Onwards. Bulletin 1999/24 October 1999. Department of Health.

of 21 and 14 units of alcohol per week. Among 16-24 year olds, 35 per cent of men and 22 per cent of women exceed these limits.

4.1.4 Since 1984, the proportion of men exceeding the limits has increased by 2 per cent, while the proportion of women exceeding the limits has doubled.

4.1.5 In regard to the current advice on 'sensible drinking', - no more than 3-4 units a day for men, and no more than 2-3 units a day for women - around half of men and a third of women in the 16-24 age group report exceeding these benchmarks.

4.1.6 A notable feature of recent years has been a growth in young people of drinking to intoxication, with all its associated problems. It is of course argued by some, apparently seriously, that this trend too is yet another evil attributable to the present licensing system.<sup>1</sup> This would be a remarkable feat indeed, as the trend is evident in those too young to drink in pubs and thus be constrained by the licensing law, and is also reported across most of Europe, including France and Spain - countries whose more relaxed licensing regimes are claimed to prevent these very problems.

## **4.2 Alcohol Related Harm<sup>2</sup>**

4.2.1 An English survey of mental health problems found that 7.5 per cent of men and 2.1 per cent of women in the 16 - 64 age group reported symptoms of alcohol dependence in the previous year.

4.2.2 Incomplete statistics show that in 1995/6 there were over 70,000 hospital admissions in England for alcohol related diagnoses. On a typical day, around 10,000 people seek help for their own or someone else's drinking problem. Family members often bear the brunt of alcohol-related problems: it is estimated that in Britain around 800,000 children are adversely affected by their parents' drinking.

4.2.3 It is difficult to establish a total number of alcohol related deaths and estimates range between 5,000 and 40,000 for England and Wales. However, it is known that deaths from alcohol-specific diseases are increasing for both men and women. They increased by over a third between 1984 and 1994, with deaths from alcoholic liver disease increasing by two-thirds during this period. Between 1994 and 1998 male and female deaths from chronic liver disease and cirrhosis increased by a further 40 per cent. Conventionally, deaths from alcoholic liver disease are taken as an indicator of the general level of alcohol related disease. The increase was especially steep in young adults aged 15-44, in whom the death rate doubled. Between 1994 and 1997 in England and Wales, total deaths from alcohol specific causes such as alcohol dependence syndrome increased by more than 25 per cent.

## **4.3 Changes in the Alcohol Market**

4.3.1 The White Paper notes that nowadays most alcohol is drunk at home and not on licensed premises. While this statement is correct, it ignores the consideration that heavier drinkers tend to drink mainly on licensed premises and that it is public drinking that tends to cause the most problems. Moreover, if the growth of new kinds of outlet indicates the need for modernisation of the legal framework, some current developments caution against treating all

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<sup>1</sup> For example, Editorial: At last, a logical review of the licensing laws. The Times 13 March 2000.

"Britain's reputation as a nest of binge drinkers and lager louts stems in part for a licensing system that encourages such behaviour. While the French and the Italians are free to linger over a glass of wine into the small hours..."

<sup>2</sup> Information from various sources including Statistics on Alcohol: 1976 Onwards. Bulletin 1999/24 October 1999. Department of Health.

outlets as being in any sense equivalent. Clearly, some have far greater potential than others for causing problems.

4.3.2 A development relevant here is the growth in age-segregation, which may in part be seen as one of the ways the alcohol industry has succeeded in retaining alcohol's place in the 'psychoactive market' that blossomed in the late 1980s and 1990s. As is well known, the alcohol industry's response to the commercial threat posed by the 'rave' culture and the popularity of illegal drugs was to produce a whole new range of 'designer drinks' targeted at young people, combined with a new range of retail outlets.<sup>1</sup>

4.3.2 The problems of antisocial behaviour associated with these new outlets have been noted, in particular the problems of 'vertical drinking', as opposed to pub restaurants where people sit at tables and have drink with food. Theme pubs have attracted particularly adverse comment because of their frequently anti-social character. One commentator has pointed out that the trend of removing traditional pub names and replacing them with infantile ones is part of the process designed to attract a youthful clientele insulated from the restraining influences of their elders and the wider community<sup>2</sup>.

4.3.4 These developments in the growth medical and social problems associated with alcohol consumption and in the alcohol market may suggest to some that this is hardly the most appropriate time to gamble that 24 hour drinking will improve the situation rather than making it worse. Nor is it self-evident that theme pubs and similar establishments are necessarily suitable environments for unaccompanied 13 year olds.

## 5.0 The Government's Proposals

### 5.1 The Licensing Authority

5.1.1 We support the Government's proposal to transfer responsibility for some licensing matters to local authorities. We agree with Section 11 of the White Paper that, on balance, the argument favours this approach, although we think that the Government's proposals go too far in excluding magistrates from the licensing process.

5.1.2 In the first place, we disagree with the Government's rejection of the idea that personal licences should be issued by the magistrates. Secondly, and partly in consequence of this, we can see no reason why the local bench should not be given observer status on the new licensing committees.

5.1.3 We support the transfer of responsibility to local authorities on the grounds of public responsiveness and accountability. However, we are concerned that local authorities may well have a potential conflict of interest in regard to the granting and revocation of licences. Local authorities will expect to obtain direct and indirect benefits from licensed premises in connection, for example, with the commercial development of town centres, and there is a clear danger that the interests of local residents will be sacrificed to these ends.

5.1.4 In our view, there is not one simple solution to this problem. Rather, it is a matter of the legal framework governing licensing; the degree of public responsiveness of the licensing

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<sup>1</sup> Kevin Brain. Youth, alcohol and the emergence of the post-modern alcohol order. IAS Occasional Paper. Jan 2000.

<sup>2</sup> "Public houses full of only young people will have no such social restraint on behaviour. The quiet word from an elder — perhaps even from the youth's father — when he does something inappropriate - is not available. Behaviour can go unchecked until the time comes for the manager, having made sufficient profit on behalf of his masters, to deem enough is enough and throw the delinquent out. Where a pub has a 'theme' that attracts clientele from miles around, no one worries too much about how (the delinquent) behaves, because he lives elsewhere. It is not his community meeting-place he is fouling up, not his streets in which he is drunk and disorderly". Simon Heffer: What are these rats doing to Britain's pubs? Daily Mail 21 August 1997.

process and the rights of local residents to object to decisions of the licensing authority. These issues are discussed further below.

## **5.2 Personal and Premises Licences**

5.2.1 We do not object on principle to the concept of a split system of licensing but we question whether the Government's proposals contain sufficient safeguards for the system to work satisfactorily in the public interest. There is also the problem that this section of the document is one of those characterised by considerable ambiguity. It is difficult to tell from the White Paper where the responsibilities of the personal licence holder end and those of the premises licence holder begin, especially of course when they are different people.

5.2.2 We assume that it will be possible for the holder of the premises licence to be a corporate body and that in this case it will be necessary legally to define the legal liabilities of corporate bodies.

5.2.3 There is also the question of whether, when the personal licence and the premises licence holders are different people, both will be equally liable for ensuring compliance with the conditions of the premises licence.

5.2.4 The White Paper states that it is important that the award of both personal and premises licences be the responsibility of the same body. However, no reason is given why this should be the case beyond the statement of questionable relevance that the Government proposes making the award of a personal licence automatic in cases where the applicant has gained an accredited qualification and has no criminal convictions.

5.2.5 We disagree with this proposal. The mere fact of having a qualification and being free of criminal convictions is not normally taken as an assurance of suitability for a job, especially in the absence of relevant experience. There is no obvious reason why the job of licensee should be treated differently. We fully support the requirement of training for licensees. However, especially given the varied demands placed on them in the wide range of licensed outlets that now exists, the possession of an accredited qualification does not of itself indicate that a person's suitability for a post can simply be taken for granted. Nor does previous experience in one kind of establishment necessarily indicate a person's suitability to manage an entirely different kind of establishment.

5.2.6 In our view, therefore, the need will remain, and not merely in 'exceptional' circumstances, for an assessment to be made of the character and suitability of applicants for licences and of licensees, particularly when they move between premises. We think that this is a task best performed by magistrates who have accumulated great expertise in this area over the years, and who, it is proposed, will in any case retain responsibility for applying sanctions to personal licence holders.

5.2.7 The need for careful scrutiny of the suitability of licensees is particularly necessary in view of the Government's apparent willingness to allow holders of personal licences to be responsible for more than one establishment. The White Paper refers to the requirement of a personal licence for the person "running the premises on a day to day basis", but it does not state that this person's responsibilities are necessarily restricted to the one establishment. There is nothing in the White Paper, therefore, to prevent a single licensee from being responsible for several premises at the same time, not merely as a temporary expedient but as a permanent state of affairs. This is one of the issues that the Government has failed to think through and we assume that it will bring forward a more sensible proposal in due course.

5.2.8 In view of the obvious importance for the operation of the new system of the proposed National Database for Personal Licences, we are surprised that the White Paper fails to explain who is to be responsible for implementing and maintaining the Database, or where the resources needed to operate it will be obtained.

5.2.9 The vagueness of the White Paper in regard to the day to day management of licensed premises is also apparent in connection with the question of the skills and qualifications of staff other than the licence holder. All the White Paper says is that licence holders should ensure that their staff receive “adequate training and guidance”. However, there is no suggestion that licence holders will be obliged to do this; there is no indication of what would count as “adequate” and there is no reference at all to the need for proper staff supervision. These are important questions, particularly in relation to, for example, a large, heavy drinking city centre pub trading 24 hours a day. It is a matter of some concern that here as elsewhere the Government is so indifferent to the public interest that it does not appear to have considered them.

5.2.10 The White Paper proposes that personal licences be issued for 10 years, with the presumption in favour of automatic renewal for a further 10 years. We think that 20 years is an excessive period of time to expect a person’s initial training still to be fresh and relevant. In our view, a condition of a renewal of a personal licence should be that the holder undertakes an accredited refresher course.

5.2.11 As far as the premises licence is concerned, the operating plan is another area in which the White Paper’s lack of clarity is evident. It does not indicate clearly how great a departure from the original plan must be in order for the licensee to be obliged to inform the licensing authority. It is hardly inconceivable that during the lifetime of the business, perhaps under the pressure of the very competition the Government’s proposals are designed to increase, a licensee may choose to change quite radically the character of his establishment, without necessarily amending the opt-outs. These changes could, however, be of sufficient importance to have been taken into consideration at the time of the original granting of the premises licence. They could, for example, affect the suitability of the premises to unaccompanied young children, a matter on which the licensing authority is expected to have a view.

5.2.12 In regard to such situations, the White Paper appears to put the onus not on the licensee to inform the licensing authority, but on third parties to seek a review of the licence and its conditions. One consequence of this policy is, of course, that matters could only be raised after the event. Another is that they will be raised in a forum which is necessarily adversarial in nature.

5.2.13 We believe that what is actually called for here is that the new licensing authority seeks ways of entering into a constructive dialogue with licensees, facilitating the effective monitoring of premises and early warning of significant changes of trading policy. We make this suggestion because however obvious it may seem, it is not to be found in the White Paper. Moreover, it may have implications for the size of the administrative burden placed on some local authorities. There will also, for example, be a clear need for training programmes for elected officers and staff in regard to alcohol and licensing matters. Unfortunately, on matters such as this the White Paper is largely silent.

### **Occasional Permissions**

5.2.14 We do not have any objections of principle to the Government’s proposals. However, we would welcome further clarification. We assume, for example, that the police will be required to inform the licensing authority of the temporary permissions that have been granted.

5.2.15 In regard to those holding premises licences, the White Paper states that there will be a right of appeal against decisions by licensing authorities but does not state either who will hear the appeal, or whether there will be a similar right of appeal against decisions of the police.

## **5.3 A Single Unified On-Licence**



5.3.1 The present licensing laws are archaic in the sense that they do not reflect the transformation of the alcohol market and the breakdown in the once clear-cut distinctions between different kinds of outlet.

5.3.2 We understand, therefore, why the Government is thinking in terms of a single, unified on-licence covering the whole range of outlets. Unfortunately, while we agree that such an arrangement would have the great advantage of simplicity, there are also dangers attached and we do not believe that the Government's proposals maintain an adequate degree of social protection.

5.3.3 Presumably, one result of a unified licence is that all licensed restaurants will function like present-day pubs and be able to sell alcohol without any requirement that it is ancillary to a meal. One potential consequence of this is a considerable increase in competitive pressures that could have adverse social consequences. (see below – criterion of need)

5.3.4 The Government may regard the old distinctions between types of outlet and the safeguards associated with them as obsolete, but the NOP poll shows that that opinion is not shared by the general public. Very large majorities are opposed to licensed restaurants becoming pubs in the way the Government proposes and of giving children unlimited access to bars.

5.3.5 An even larger majority is opposed to the prospect of fast food restaurants like MacDonald's becoming a kind of pub. Clearly, the public recognise that these restaurants provide one of the few remaining alcohol-free meeting places acceptable to unsupervised youngsters. Given the widespread concerns about underage drinking and its associated problems, this is a valuable social function.

5.3.6 It may be that the Government believes that concerns regarding these aspects of the proposals are unwarranted, as sufficient safeguards will be put in place. However, the White Paper provides no assurances that the Government's proposals for a unified licence will not have such adverse side effects. Indeed, the White Paper fails to address these issues at all.

#### **5.4 Objections to Licences and Conditions**

5.4.1 We support some of the individual measures proposed but we do not accept that the package as a whole strikes the right balance between the needs of business and the interests of local residents. Our main concerns are the unreasonable burdens placed on local residents and the strong disincentives to local residents pursuing an objection to a licence or its conditions.

5.4.2 Sometimes, local residents will have legitimate cause for complaint arising from the characteristics of specific, badly managed premises. In these cases, the proposed new police power to close disorderly premises will be helpful. However, we are concerned that the White Paper appears to deny local residents any means of appealing against a decision of the licensing authority to refuse to review a licence. We accept that it is necessary to discourage flippant or malicious objections, but to deny local residents any means of redress at all is surely going too far.

5.4.3 We are concerned that the proposal to allow continued trading during an appeal could negate the whole purpose of the sanction when it is being imposed, for example, because the premises are unsafe.

5.4.4 In regard to opportunities to object to licences, the White Paper states that all local residents and businesses etc. within the licensing area should be notified of new applications for licences. Unfortunately, it does not state who is to be responsible for doing this or on whom

the cost of doing it will fall. Clearly, unless responsibility is properly assigned and resources allocated, this process will not in fact take place.

5.4.5 Where applications for a new licence or late trading are concerned, we consider it an unjustifiably onerous burden on local residents that they should be expected to prove in advance that their lives will be 'unreasonably' disrupted. Natural justice surely dictates that it should be incumbent on the party whose action might inflict damage on others to establish the acceptability of the proposals. It reflects an odd if not downright perverse concept of natural justice to place the burden of proof on the potential victims, especially given the imbalance of resources between them and the applicants.

5.4.6 As is demonstrated by the experience of the residents' association in Aberdeen (see below page 19), in some areas local residents could be more or less constantly occupied in trying to protect themselves from a succession of applications. Often, if not usually, these applications will be made on behalf of large, powerful companies with ample resources to obtain the best legal representation.

5.4.7 On the basis of the Government's proposals, not only must the unfortunate local residents find a way of fighting and funding this unequal contest, they must do so in the knowledge that if they lose the case on appeal, they could have all the costs awarded against them. It is difficult to imagine a greater disincentive to local residents protecting themselves against 'their lives being made a misery'.<sup>1</sup>

5.4.8 Unfortunately, even that is not the end of the matter. For in such cases local residents will have some means of redress, however much the odds may be stacked against them. In others, enormous disruption could be caused to local residents without this necessarily being traceable to identifiable, individual outlets, for example along the routes from residential areas to the town centre and around the town centre itself. As Inspector Bray observed in relation to the problems experienced by the unfortunate residents of Whitley Bay (see below): "We have no gripes with the way the pubs are run, but with the behaviour of the drinkers on their way home". In Whitley Bay this behaviour apparently included shouting, swearing, public urination, fighting, vandalism, and threatening local residents with reprisals if they complained. How does the Government propose that, faced with similar situations, local residents protect themselves? The White Paper appears to offer no means for them to do so, especially as the Government proposes to remove an element of the existing legislation that could be used to protect them- the 'criterion of need'. (See below)

5.4.9 As the defining criteria of 'reasonable objections' to new applications laid down in the White Paper are patently too restrictive, it follows that there should not be presumption in favour of granting a licence without a hearing in the absence of objections. In our view, the licensing authority should not be able to abdicate its responsibilities in this way: all applications should be examined to ensure that they are compatible with the public interest and the process of examination should always be conducted in public.

5.4.10 In this connection, it is noteworthy that the list of bodies given in the White Paper (p.26) as having the right to be involved in the licensing process and to object to applications excludes schools and hospitals, both of which can be directly affected by licensing decisions. Bearing in mind the debates over the 1988 Licensing Act in which these issues were debated at length, this is a retrograde step, entirely consistent with the Government's unjoined-up approach.

## 5.5 Fair Procedures and Appeals

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<sup>1</sup> The phrase was used by Mr Gerald Kaufman House of Commons 10<sup>th</sup> April 2000.

5.5.1 The most conspicuous feature of the Government's proposals regarding appeals is their lack of clarity. The relevant paragraphs (principally 127 and 128) consist of self-contradictory statements which assert both that the appeal courts will be able to re-consider the merits of the case and also that they will not be able to do so, as they will be restricted to legal and procedural matters.

5.5.2 The incoherence of this section of the White Paper is clearly demonstrated by the fact that different organisations have interpreted it in opposite ways. J.D. Wetherspoon's response to the White Paper condemns the proposed appeals mechanism as "wholly unacceptable" because of disallowing "any reconsideration of the merits of the case, being restricted to points of law or procedure". In contrast, the guidance issued to members of the Licensing and Protection Panel of a District Council states "the proposed appeals process is likely to give rise to appeals against the merits of the decision rather than on procedural matters and requires further clarification."

5.5.3 We are no more able than anyone else to determine from the White Paper what the Government really intends, but in regard to the substance of the issue we disagree with Wetherspoon's. In our view, it would clearly negate the whole purpose of setting up the new licensing authorities if the Crown Court were able to overrule them by re-running the cases. Presumably, Wetherspoon's anticipate objections from Councillors and local residents and are seeking the assurance that their greater resources will enable them to overcome these objections by means of the appeals process.

## **5.6 Sanctions and Punishments**

5.6.1 We support the general principle of the more flexible system of sanctions proposed by the White Paper. We are concerned however by the uncertainty in regard to what the Government intends in relation to the division of responsibility between personal licence holders and premises licence holders, particularly when they are different people and the holder of the premises licence could, we assume, be a corporate body.

5.6.2 We believe that in cases where the police or the Crown Prosecution Service decide not to pursue a prosecution, they should be required to inform the licensing authority of the matter rather than merely having the discretion to do so if they choose. Such notifications could serve as a valuable part of the monitoring and early warning system referred to above.

5.6.3 We support the Government's proposals in regard to exclusion orders.

## **5.7 Children and young people**

### **5.7.1 Legal Age for Purchase of Alcohol**

5.7.1.1 We are pleased that the Government finally came to the conclusion that the time is not right to lower the current age limit to 16 or 17. We are, however, concerned by the clear implication that the Government could yet be persuaded to change its mind, an impression reinforced by this being one of the few issues on which the White Paper explicitly seeks views.

5.7.1.2 This request for views does of course imply that public and professional opinion is divided on the matter. We are not aware of any reputable body concerned with public health, alcohol abuse or the welfare of young people, which is calling for a lowering of the legal purchase age. So far as we know, the consensus of professional opinion is strongly opposed to such a move. It is noteworthy that in the section of the White Paper concerned with this issue, the only organisations cited as being in favour of lowering the age were those that made representations to this effect to the Erroll Committee nearly thirty years ago. There is no suggestion in the White Paper that these organisations are still of the same opinion.

5.7.1.3 Nor will any change of mind be due to the pressure of public opinion. There is minimal support – less than 10 per cent – for any lowering of the legal age. Over three-quarters of the

population favour retaining the present law. There is more support for raising the legal age than for lowering it.

## **5.7.2 Tighter Controls on the Purchase of Alcohol**

5.7.2.1 We support in principle all the proposals listed in paragraph 27 of the White Paper in regard to tightening the law on sales of alcohol to under 18's. As usual, however, there are some aspects requiring clarification:

- We interpret the White Paper as meaning that the Government proposes to replace the 'due diligence' test with a positive duty to confirm acceptable age. But what will the person selling alcohol will have to do in order to carry out this duty?
- Will any legal defence be permitted to a charge of selling to the under-aged?
- Will it be a condition of being granted a premises licence that the licensee agree to operate a proof of age scheme?

In regard to the proposed new offence of selling or supplying to minors for consumption outside the home:

- Presumably, for the purpose of legislation a closer definition of 'the home' will be required than is given in the White Paper
- Will it be necessary to prove that the retailer knew or, alternatively, had reasonable grounds to suspect that the alcohol was to be consumed outside the home?
- What defence will retailers be permitted in regard to the offence of selling alcohol to people buying on behalf of minors for consumption 'in public places'?

## **5.7.3 Access to Licensed Premises**

5.7.3.1 We accept that the necessity and applicability of children's certificates is reduced by the blurring of the old distinctions between different kinds of outlet. We fear, however, that the vagueness of the White Paper in relation to the alternative safeguards proposed by the Government suggests that they are unlikely to be adequate.

5.7.3.2 In the first place, the White Paper gives no indication of what criteria will be employed by the licensing authorities to determine which premises are unsuitable for unaccompanied children, and whether licensing authorities will be free to select their own criteria or whether they will be nationally laid down.

5.7.3.3 Secondly, in relation to premises deemed to be unsuitable for unaccompanied children, the White Paper refers to the children having to be "supervised by an accompanying adult". Unfortunately, neither of these terms is defined. Presumably, "supervision" refers to something more than the mere fact of being "accompanied", or the White Paper would have referred simply to children having to be accompanied by an adult, but what is that extra something? And what indeed is the meaning of "accompanied"? Presumably, the term implies at least being immediately available if needed, but would this require being in the same room, or merely arriving and departing from the building together?

5.7.3.4 Thirdly, whatever criteria are chosen in regard to the (un)suitability of premises for unaccompanied children, these features are not necessarily permanent and unalterable. Licensed premises can change their clientele and hence their character quite markedly over time, even regularly during different times of the day and the week. The same pub can provide a very different environment at lunchtimes compared with late at night or at weekends. Is it the

Government's intention that even young children (normally unaccompanied) should have free access to licensed premises all the time they are open, irrespective of any changes in the environment they provide? Alternatively, if children's unaccompanied access to licensed premises is to be restricted to times considered suitable, how is this to be managed?

#### **5.7.4 Consumption on Licensed Premises**

5.7.4.1 We support the Government's proposals in regard to the consumption of alcohol on licensed premises by under 18s.

5.7.4.2 Our only comment relates not to the proposals themselves but to the misleading and hypocritical way the issue is discussed in the White Paper. There is of course a significant and growing problem of under-age drinking, but there is no justification for implying, as the White Paper does, that the problem of alcohol misuse and the problem of underage drinking are one and the same. It is probable that more serious damage is done to young people as a result of adult drinking than their own, the very adult drinking that the Government's proposals are likely to increase.<sup>1</sup>

5.7.4.3 We share the Government's wish to improve public knowledge and understanding of underage drinking. We are, however, curious as to why the only organisation whose work in this area is recognised in the White Paper is the Portman Group. There are in fact a number of organisations which have been doing good work in this area for rather longer, and for less self-interested reasons than the Portman Group. Presumably, the Government has its reasons for ignoring them.

#### **5.8 Off Licences**

5.8.1 We support in principle the Government's proposals for closing off-licences for public order reasons. However, we are concerned by the inconsistency of approach, in that the White Paper appears to exclude the licensing authority from having any involvement whatever in the decision temporarily to close an off-licence. No doubt there are good reasons why the police and the magistrates should be the bodies primarily responsible, but it would surely be appropriate for the licensing authority at least to be informed.

5.8.2 We are also concerned, as usual, by a lack of clarity in regard to what the Government actually has in mind;

- What guidance will be offered to the police in regard to 'potentially difficult public order situations'? What test will be used?
- Who will be responsible for enforcing temporary closures?

5.8.3 We agree with the Government's views in relation to wholesale, mail order sales, motorway service stations and alcohol in confectionery and other foodstuffs.

5.8.4 We support the Government's provisional view that in order not to undermine the anti-drink driving message, alcohol and petrol should not normally be sold from the same site. Over three-quarters (78%) of the population are opposed to petrol stations being allowed to sell alcohol. We cannot see any compelling reason why the opinion of the large majority should be disregarded.

#### **5.9 The Criterion of Need**

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<sup>1</sup> Alcohol Problems in the Family: A report to the European Union. EURO CARE 1998

5.9.1 The White Paper states that decisions on whether to grant a new licence should be confined to considerations regarding impact on crime and disorder, public safety and 'unreasonable public nuisance'. It accepts uncritically the current view of the Brewers and Licensed Retailers that the licensing authorities should not be able to take into account 'commercial matters such as the economic demand for a new venue'.<sup>1</sup>

5.9.2 We agree that assessing the commercial viability of a new venture is not a proper function of the licensing authority, but protecting the public interest is. In our view, that requires having a adequate means of controlling the number of licensed outlets in a locality.

5.9.3 There is good evidence<sup>2</sup> that some alcohol related problems stem less from individually identifiable, badly managed premises than from the density of licensed outlets in a locality. These problems include drunkenness convictions, drink driving and admissions to hospital accident and emergency departments.

5.9.4 Some may consider it strange, therefore, that a Government about to launch a strategy for tackling alcohol related problems should propose a new system preventing licensing authorities from taking into account these very considerations. At the very least, the research findings in regard to the density of outlets surely provide further reason for ensuring that the impact of the new licensing system is carefully monitored and assessed so that corrective actions can be taken if necessary.

5.9.5 We are not convinced that the powers granted to local authorities under the planning procedures enable them to exercise sufficient control of the number of outlets. One commentator suggests that under the proposed regime, local authorities would, by virtue of the Town and Country Planning (Use Classes) Order 1987, Circular 13/87 paragraph 19, be virtually driven to grant a full on-licence if requested to any outlet. The White Paper provides no assurance that this is incorrect.<sup>3</sup>

5.9.6 Nor does the White Paper offer any justification for abolishing the 'criterion of need' in licensing law, or for rejecting the Scottish model which allows licensing authorities to reject applications for new licences on grounds of 'over-provision'. These issues are not discussed at all in the White Paper.

5.9.7 We believe it is in the public interest that such a power be retained in some form. Proposing to abolish it is one of the features of the White Paper that gives the lie to the Government's claim that it seeks to empower local communities. There is overwhelming public support for residents to have the right to object if they think an excessive number of pubs and clubs are being opened in a locality. In our view, the criterion of need or over-provision is essential if that right is to be meaningfully exercised.

5.9.8 Ironically, some of the main reasons why taking the current advice of the Brewers would have highly undesirable consequences have been identified by the Brewers themselves. In their evidence to the Erroll Committee, the Brewers explained that removing discretion from the licensing authorities in regard to the granting of new licences would, in the first place, prevent their taking into account local public opinion in regard to whether or not additional licensed outlets should be permitted.

5.9.9 They also argued that removing such control would increase competitive pressures through increased numbers of outlets, possibly reducing profitability and so depressing standards of conduct and amenity. The danger, they said, was that licensees of failing public

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<sup>1</sup> Licensing Law and Consumer Choice: An Agenda for Reform. Brewers and Licensed Retailers Association January 1997

<sup>2</sup> Alcohol availability and alcohol problems in 213 Californian cities. Watts R and Rabow J. 1983 Alcoholism: Clinical and Experimental Research 7, 47-58

<sup>3</sup> Edith Korner: Magistrate Debate. Licensing Powers. The Magistrate. October 1998.

houses would be tempted to engage in 'sales pushing' or cutting corners. In such situations the atmosphere of the public house would be "unlikely to be conducive to moderation."

5.9.10 These are good arguments, the validity of which is not affected by the Brewers now arguing the exact opposite purely because, having divested themselves of their pubs, their own financial interests have changed.

5.9.11 Experience in parts of the USA confirms the Brewers Society's fears. Excessive concentration of liquor stores adversely affects neighbourhoods by increasing the propensity for bad management, intense competition forcing owners to cut corners or pushing them into illegal activities to maintain acceptable profit margins. Typical problems include selling to minors; littering; loitering; harassment and intimidation of pedestrians and customers; public urination; drug dealing; prostitution; assault and homicide.<sup>1</sup> One American study calculated that reducing the number of retail alcohol outlets in inner-city areas (which tend to have high concentrations of outlets) could cut the homicide rate by up to 10 per cent.<sup>2</sup> Controlling the number of liquor stores - in Chicago by means of local referenda - can thus be a vital part of the process of urban renewal.

5.9.12 In the UK, a former Home Secretary (David Waddington) urged Magistrates to use the power that the present Government seeks to abolish in order to prevent what he called 'alcohol flashpoints' - an over-concentration of licensed outlets in a locality, in order to reduce public order problems. More recently, Superintendent Brian Wroe of Greater Manchester Police referred to the problem caused by the continuing explosion of new bars in the city centre, where in the last ten years the number of bars has doubled from 220 to 500, and where between 1998 and 1999, the number of recorded assaults outside bars and clubs rose by 30 per cent.<sup>3</sup>

5.9.13 This view is shared by some in the licensed trade. In Scotland, the then president of the Licensed Trade Association identified over-provision of outlets as one of the main problems facing the industry and as a significant cause of alcohol abuse. He said that too many outlets were chasing insufficient trade by means of sales promotion and corner cutting, accepting lower profits so that there was less money available for reinvestment and staff training.

5.9.14 Using the example of Glasgow, he pointed out that over a 21-year period there was a 35 per cent increase in the number of licensed premises while the population declined by 30 per cent, he stated:

*"We believe the continued granting of new licences is halting the development of the licensed trade and increasing greatly the abuse of alcohol...All you have to do is walk down the main streets of our cities and see many places offering drink...at ridiculously low prices It makes one wonder how they can afford it. The truth is, they can't and ..... society can't either ..... Only by arresting the problem of pub saturation can we bring back equilibrium in pricing and reduce the risk of alcohol abuse in society"*<sup>4</sup>

If this is the case in Scotland where the over-provision criterion applies, then how much bleaker the prospects must be in England and Wales, denied even that much protection?

## 5.10 Licensing Hours

5.10.1 We do not object on principle to any extension of licensing hours. In our view, the priority should be to make the licensing system democratic, more accessible and responsive to

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<sup>1</sup> A. Maxwell and D. Immergluck: Liquorlining: Liquor Store Concentration and Community Development in Lower-Income Cook County Neighborhoods. Woodstock Institute. 1997

<sup>2</sup> Alcohol and homicide A deadly combination of two American traditions. RN Parker 1995.

<sup>3</sup> The Sunday Times 23<sup>rd</sup> July 2000

<sup>4</sup> Paul Waterson in Scottish Council on Alcohol Update January 1999

local communities. It follows that those who wish to extend licensing hours should have the right to do so. Equally, longer hours should not be imposed on localities that do not want them. The evidence suggests that most will not. We assume that there is greater demand for extended hours in town and city centres than in residential areas.

5.10.2 None of this, however, implies agreement with the Government's proposal for complete de-regulation of closing times, a proposal to which the great majority of the public, especially women, are opposed and which, if implemented, is likely to impose considerable burdens on local communities and, ultimately, the wider society.

5.10.3 We are particularly concerned that the effect of the Government's proposals will be to prevent the licensing authority from operating a coherent policy on licensing hours for its district. (Paragraph 66) This proposal in particular reveals the Government's claim that it seeks to empower local communities as mere pretence.

## 5.11 The Argument

5.11.1 The principal claim is the ludicrous one that the sole reason for drunken disorder on our streets are the restrictions introduced during the First World War 'to keep the munitions workers sober'. The clear implication of this story is that both licensing controls and drunkenness are inventions of the early C20th, an eccentric reading of British history but one to which both the White Paper and the Home Secretary in his statement to the House of Commons appear to subscribe.

5.11.2 According to the mythology that has been so assiduously constructed, these restrictions are the cause of all the problems. Only get rid of them, we are assured, and there will be no bingeing and drunkenness: we shall become like the French and the Spanish, who, apparently, are entirely free of alcohol problems.<sup>1</sup>

5.11.3 In the House of Commons, the Home Secretary urged Honourable Members to examine the chart in the White Paper showing "the number of public order incidents that occur not at 10 or 11 pm but at 2 and 3 am as a result of the current inflexible closing times."<sup>2</sup>

5.11.4 It is difficult to see how the chart shows anything of the sort. Clearly, it provides a statistical demonstration of the fact that there is a close relationship between incidents of public disorder and the hours when alcohol is consumed, with the highest number of incidents occurring in the middle of the night. But it is hardly self-evident that the cause of this pattern is inflexible closing times<sup>3</sup>. On the face of it, the pattern shown by the chart owes more to opening than closing times. Indeed, it is difficult to see how the 11pm pub closing time could possibly cause incidents of public disorder to peak 3 to 4 hours later. In order to make any sense of the

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<sup>1</sup> Ms Griffiths believes that de-regulating closing times will help "to end the lager lout culture." Mr. Eric Forth appears, bizarrely, to believe that the wholly different drinking culture of the French is due to their licensing laws rather than the other way round. Mr. Forth appears not to know, however, that France has one of the highest rates of alcoholism in the world. House of Commons 10<sup>th</sup> April 2000.

<sup>2</sup> The Home Secretary's confidence in this line of argument is in rather striking contrast to the views of some of those who will be called upon to operate the system: "Time is being called on a late night drinking experiment after crime rates soared and left locals fuming....Inspector Kevin Bray of North Shields police said: 'Late licensing was an experiment in Whitley Bay. We always said we would review it and the figures show it has failed'. Police objected because of the worrying increase in arrests and disorder. ...although locals are delighted the experiment is being curtailed, they fear their victory may be short-lived after the Government revealed plans to allow...pubs to open 24 hours a day." Newcastle Evening Chronicle 23 February 2000

<sup>3</sup> The Portman Group report claims (p104) that prior to the 1988 Act there was a slight increase in drink-related arrests when the pubs closed in the afternoons, but that all-day opening has caused this blip to disappear. The figures given in the White Paper show, of course, that twelve years after the abolition of the compulsory afternoon break, the blip does in fact remain and there is still a minor peak of incidents of public disorder between 3pm and 5pm.



Home Secretary's comment, it is necessary presumably to attribute the bulk of public disorder incidents to the closing times of clubs rather than pubs.<sup>1</sup>

5.11.5 If, however, the Home Secretary's comment and the argument of the White Paper do relate to 11pm pub closing, it is worth noting the irony that the effects of this restriction must now be exactly the opposite of what they were when first introduced.

*"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."*

5.11.6 This comment was not made by any individual or organisation with 'anti-alcohol' views: it was contained in an editorial in the *Brewers' Gazette*. Testimony to the beneficial effects of 11pm closing was also given by Sir Edgar Saunders, then 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."*

5.11.7 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 place ....No one can go about the streets without noticing it".*

## 5.12 Who will make use of the extra hours?

5.12.1 The implication of the White Paper is that present closing times are regarded as a considerable inconvenience by the bulk of the population, who are very keen to have the opportunity of drinking late through the night. None of this is true.

5.12.2 Only a relatively small minority - around 20 per cent - say that they will make use of extended drinking hours at all frequently. This minority is made up disproportionately of people who, presumably, the Government and the alcohol industry would describe as 'alcohol abusers'. Those who exceed the recommended 'sensible limits' promoted by the Government and the industry are twice as likely as those who do not to say that will make use of the extra hours. This is the same pattern that has already been found in relation to previous extensions of drinking hours in the UK and elsewhere. Evaluation of the 1988 Licensing Act showed 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 drinking in pubs, compared with just 22% of 'sensible drinkers'.<sup>2</sup> In one Australian study<sup>3</sup>, two thirds of those drinking in bars late at night were found to show signs of alcohol dependence.

5.12.3 A conspicuous irony of the Government's proposals, therefore, is that the economic viability of extended drinking hours is clearly going to depend to a large extent on the custom

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<sup>1</sup> The section on Risk Assessment in Appendix 4 of the White Paper states that over half of all public order incidents occur between 11pm and 12 midnight on Friday and Saturday nights. This is not consistent with the figures shown in the chart. The point, however, is that the most likely effect of later closing is not to eliminate the clustering of incidents but to delay it. In most modern cities around the globe, there is a peak in recorded incidents of violence shortly after midnight, whatever the licensing hours. (Stockwell, *Addiction* 92 Number 8 August 1997).

<sup>2</sup> E Goddard - *Drinking in England and Wales in the Late 1980s*. OPCS HMSO 1991.

<sup>3</sup> Smith DI 1986 Comparisons of hotels with early opening hours and standard hours. *International Journal of the Addiction* 21, 155-163.

of the very groups of people whose drinking the national alcohol strategy will presumably seek to reduce.

### **5.13 The Evidence from Other Jurisdictions**

5.13.1 The White Paper contains a list of improvements that 'research shows' de-regulation will bring about. Unfortunately, the source of this 'research' is not an authentic academic publication, but a book published eight years ago on behalf of the Portman Group, an association comprised of some of the very brewing companies which have campaigned most vigorously for extended drinking hours. When this book first appeared, it was condemned by a reviewer as being of such poor quality that, had it been submitted for peer review, it would have been rejected for publication.<sup>1</sup>

5.13.2 The White Paper ignores completely the authentic scientific literature on the subject. Generally, this finds that while increased hours of trading may not increase the overall level of alcohol consumption (at least where alcohol is already widely available), they do increase the problems associated with consumption. A recent publication summarised the international research evidence as follows:<sup>2</sup>

- Increases in hours of sale are consistently related to increases in alcohol-related harm, including traffic injury, street disorder and violence.
- Later and longer hours for alcohol sales contribute disproportionately to heavier drinking and drunken behaviour.

These findings, of course, confound the whole premise of the White Paper.

### **5.14 Scotland**

5.14.1 The evidence for Scotland being a model of peace and sobriety due to de-regulated closing times is not quite as clear-cut as the proponents of de-regulation suggest. Even the Portman Group report concludes that the Scottish evidence is too ambiguous to draw definite conclusions in regard to the effects of changes in permitted hours.

5.14.2 However, the only other source cited in the White Paper, the Home Office report Alcohol and Crime: Taking Stock, states: "The Scottish experience of more liberal drinking hours appears to have worked well, changing the masculine binge drinking culture to a slower drinking, female-friendly environment."

5.14.3 No evidence in support of these claims is given. If binge drinking has indeed declined in Scotland, it is probable that this is a result the drinking environment being made more female-friendly, rather than female-friendliness being a result of extended drinking hours.

5.14.4 It is true that since the reform of licensing hours in 1976 there has been a substantial fall in drunkenness and related offences. However, it is not certain that this fall can be attributed to licensing reform or even that what has occurred is a real decline in offences rather than changes in regard to police practices and the recording of offences.

5.14.5 Other evidence suggests that the issue is not straightforward. For example, in 1987 the chief constable of Aberdeen blamed the late-night opening policy for a growing problem of disorder on the streets:

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<sup>1</sup> Dr. P. Anderson: Review of Drinking and Public Disorder. *Addiction* (1993), 88. 139-144.

<sup>2</sup> Brief of evidence of Linda Marian Hill  
Alcohol & Public Health Research Unit (APHRU), Faculty of Medical and Health Sciences, University of Auckland.

*“..between 2am and 4am, particularly at weekends, around 2,000 18-25 year olds are congregating in the city centre. Disorder is now escalating and, to control the situation further, adjustment to the system of policing has become necessary and overtime is being incurred....one year’s overtime costs are projected at £115,000. This is unacceptable.”*

**5.14.6** A year after the chief constable’s comments, the Scottish Office sent a circular to all the licensing boards which 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.”*

**5.14.7** Statements (personal communication) by members of a Residents’ Association in Aberdeen suggest that the problems continue to the present day. The Association is presently engaged in objecting to five recent applications for new licences within a 200 metre radius of their homes.

*“Residents will be protesting about applications for late night extensions in an area where residential housing is only across the street. We have won many battles but lost just as many over our last two years of objecting. Over-provision does not seem to be an objection that carries any weight and although we often have over sixty objections to a licence it still goes ahead.*

*“We are constantly told that as city centre residents we have to live with the noise, vandalism and public nuisance. Ten years ago there were no pubs in the vicinity, now there are 11 pubs/clubs spread over 2 blocks and in a residential community!*

*“In Aberdeen residents feel that the battle against licensed premises in our community is almost impossible. ..Residents in this area have arrived at a crisis point and we really have no choice but to move out.”*

**5.14.8** In Edinburgh, the Safer Edinburgh project team concluded that the liberalisation of the licensing law 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”. Part of the problem was that lack of a uniform closing time resulted in considerable numbers of people wandering homewards through the city centre throughout the night. The random incidents that occurred in consequence led to police resources being over-stretched.<sup>1</sup>

**5.14.9** A reduction in late night drink-related violence and disorder emerged as one of the main priorities of the Safer Edinburgh Project. Statistics provided by Lothian Police<sup>2</sup> show that substantial improvements resulted from the re-imposition of restrictions on late night opening and the reintroduction of zone closing, ie set closing times in a specified geographical district.

**5.14.10** It is particularly disturbing that the policy that proved beneficial in Edinburgh is precisely the option that the Government has rejected for England and Wales.

## **5.15 The Netherlands**

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<sup>1</sup> J. T. Carnie Evaluation of the Safer Edinburgh Project. Central Research Unit. The Scottish Office. 1994.

<sup>2</sup> Personal communication

5.15.1 Disappointed by the failure of the Scottish evidence to prove the benefits of de-regulation, the authors of the Portman Group report asserted that “the Dutch experience with ‘free closing’ [provides] a more realistic basis for assessing the potential effects of changes to the licensing law in England and Wales.” These experiments in ‘free closing’, it is claimed, “had, with only a few exceptions, been very encouraging and had now, in most towns, become common practice.”<sup>1</sup>

5.15.2 However, a spokesman for the Dutch Government rejected this claim as totally unfounded. He explained that only around 40 of 700 municipalities in the Netherlands experimented with de-regulation, and about half of them later returned to set closing times. This was because unlimited night-time opening increased problems of public nuisance and public order.<sup>2</sup>

## 5.16 New Zealand

5.16.1 The 1989 Liquor Act greatly liberalised the licensing law and allowed 24-hour opening. The main effects include:

- Late closing and last closing premises are those most likely to require policing, and problems have been reduced by cutting back their hours of trading.<sup>3</sup>
- Premises that open later than others in an area attract ‘migrating’ drinkers, with increased street disorder.<sup>3</sup>
- Licensing reform has been identified as one of the factors explaining a rise in binge drinking by teenagers.<sup>4</sup>

5.16.2 In view of the standpoint of the Chief Police Officers in England and Wales, there is some irony in the fact that, in the evaluation of the Act, it was the police who expressed the greatest dissatisfaction with 24 hour drinking hours.<sup>3</sup>

5.16.3 It was found that later drinking hours caused **increased** alcohol problems, especially in town centres. The police argued that staffing levels were no longer sufficient to police the late hours, and that alcohol problems were taking them away from other work especially between 12 am - 4 am when they were having to deal with town centre drunks instead of dealing with spate of burglaries.

A police officer is quoted as saying:

*“We don’t have staffing numbers to cope with the amount of disorder. We did some statistics for the first six months of this year and between midnight and 4.00 am 50% of the offending was by persons affected by alcohol ... We’re having a lot of burglaries in those early hours of the morning and we cannot devote staff to protecting property whilst dealing with intoxicated persons in the central town.”*

Also:

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<sup>1</sup> P Marsh and K Fox Kibby. Drinking and Public Disorder 1992 pages 109 and 136.

<sup>2</sup> Dr MJ van Iwaarden. Proceedings of an IAS conference Alcohol and Disorder. March 1992.

<sup>3</sup> Hill, L. and Stewart, L. (1996) The Sale of Liquor Act: Local Perspectives. University of Auckland: Alcohol and Public Health Research Unit.

<sup>4</sup> Trends in Patterns of Youth Drinking and Implications for Policy. Sally Casswell Paper presented at the 38th International Congress on Alcohol, Drugs and other Dependencies, Vienna, 16-20 August 1999

*"The increased drinking hours do bring with them increased problems within our central city in particular and I think it's something that's happening in a lot of major centres... street disorder and that type of behaviour that alcohol abuse induces... people smashing plate glass windows and urinating in doorways and vomiting in doorways and that type of thing."*

Police respondents also reported more arrests of drink drivers in early daylight hours following later drinking hours.

5.16.4 There was considerable opposition by local residents to very late drinking hours because or in anticipation of an increase in street disorder and vandalism in the early hours of the morning. This was expressed through attempts to oppose individual licences and renewals and to establish early closing times through planning permits, Council policy or establishing the sale of liquor as a conditional land use in District Plans.

5.16.5 The Liquor Licensing Authority now appears to have moved away from granting 24 hour drinking hours towards a standard closing time of 3pm in urban areas. A closing time of 11pm in residential areas is usually set in District Plans, under which planning consents are obtained prior to licence applications.

## 5.17 Australia

5.17.1 Australia is also some way ahead of England and Wales in regard to late trading and the de-regulation of closing times. By the mid 1990s, very late hours of on-licence trading were causing concern in New South Wales and Queensland, and 24 hour licensing was being cut back in the Australian Capital Territory (ACT).<sup>1</sup>

5.17.2 Ironically, the change of policy in ACT occurred because of increases in the very problems that the British Government insists that de-regulation will prevent – increased drunkenness, disorder and violence in the inner cities.

5.17.3 In Perth, the results were similar<sup>2</sup>:

- violent and sexual assaults more than doubled in and near late night trading hotels and clubs, compared to violence levels at liquor outlets trading normally,
- drivers leaving hotels trading normally were 31% less likely to have a serious car accident than drivers leaving hotels trading beyond midnight,
- sales of alcohol increased significantly in premises where late night trading was allowed,
- late night trading postponed or delayed alcohol related violence, road crashes and other accidents until after midnight when police and emergency services were more expensive and less able to cope with the increased demand.

In releasing the findings, Professor Tim Stockwell said:

*"This research clearly demonstrates that late night trading costs the community through increased crime, injury and increased use of expensive emergency services. Not only is this finding consistent with other research conducted in Australia, it also explains why most Australians are opposed to extended trading hours."*

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<sup>1</sup> Hill, L. (1997) *Regulating the Sale of Liquor: International Perspectives*. Auckland: Alcohol & Public Health Research Unit.

<sup>2</sup> Chikritzhs, T., Stockwell, T. and Masters L. (1987) *Evaluation of the public health and safety impact of extended trading permits for Perth hotels and nightclubs*. National Centre for Research into the Prevention of Drug Abuse, Curtin University.

Professor Stockwell and his colleagues recommended that governments which continue to support extended trading hours should:

- upgrade the co-ordination and availability of police and emergency services in areas where extended trading is permitted,
- increase the monitoring of licensed premises where extended trading is taking place,
- impose an additional "harm reduction levy" to recoup some of the additional costs associated with extended trading hours.

5.17.5 It is clear that, contrary to the propaganda emanating from those with a vested interest in selling more alcohol, and now also from the Government, experience from other jurisdictions shows that de-regulation is hardly the panacea it is claimed to be. In countries with drinking cultures similar to ours, experience with de-regulation and 24 hour drinking has in fact had very mixed results, to put it generously. Such policies have tended to exacerbate rather than solve problems of crime and disorder; they have imposed considerable additional burdens of disturbance and disruption on local residents and on public services, and, for these reasons, they have been unpopular with the public.

5.17.6 In view of both public opinion and these findings from other jurisdictions, we hope that the Government will reconsider its policy. In our view the most important recommendations are:

- No extension of trading hours should be permitted unless there is clear community support
- Extensions of trading hours should be provisional or probationary subject to careful monitoring of the social impact especially levels of drunkenness, crime, violence and accidents.
- To retain an extended trading hours permit licensed premises should be able to demonstrate in public hearings that they have operated extended trading hours without unacceptable impact on the amenity of the local community.

## **5.18 Sundays**

5.18.1 On one particular issue, the Government threatens not so much to ignore public opinion as to treat it with utter contempt. The majority of the public are opposed to greatly extended drinking hours on any day of the week but especially on Sundays. The Government rejects the possibility of any special arrangements for Sundays on the grounds that we live "in a multi-cultural and diverse society in which a great range of days are held by certain groups to be sacred or special". The "only sensible approach", therefore, is to treat each day equally in respect to licensing law.

5.18.2 There is no justification for assuming that religion provides the only reasons anyone could have for objecting to extended drinking hours on Sundays. On the contrary, unless there were good secular reasons involved, it is very unlikely that the majority against extended drinking hours on Sundays would be as large as in fact it is.

5.18.3 We are, however, dismayed by the arrogance of the Government in dismissing as unworthy of consideration or respect the cultural heritage shared by vast majority of the population it is supposed to represent. This attitude is particularly objectionable in a

Government that claims, obviously hypocritically, “to love British history, Britain's cultural heritage (and) the British way of life”.<sup>1</sup>

5.18.4 As well as arrogance, there is dishonesty involved here. The Government recently sought to amend the Sunday Observance law on the basis of an assurance that, in order to protect local residents, before deciding whether to allow the sale of alcohol late at night, the licensing authorities would be required to consider “the special nature of Sundays.”

## **5.19 Exceptions and Exemptions**

5.19.1 We welcome the attention paid to the present anomalies in the licensing law and we agree with most of the Government’s proposals in this section, including the proposal in regard to sales to minors.

5.19.2 In regard to alcohol abuse on board ship we have already provided our views have no further comment.<sup>2</sup>

5.19.3 In regard to trains, we disagree with continuing to exempt them from the licensing laws. Arguments about trains being merely temporary assemblies of carriages do not appear to us to carry any real force. Clearly the Government itself does not regard the possibility of travelling through a number of licensing districts on a single journey as providing a reason for exempting boats from the need to obtain a premises licence, and it is difficult to see why trains should be treated differently.

5.19.4 In regard to aeroplanes, we think that despite the relative shortness of the journeys on domestic flights it would probably be a service to the airlines and to the large majority of passengers if the powers of refusing to allow an intoxicated person to board a plane, and refusing to serve alcohol to an already intoxicated passenger were given a full basis in law.

## **5.20 Economic Considerations**

5.20.1 The White Paper contains elaborate calculations of the cost savings to the alcohol industry of the Government’s proposals. It does not, however, address the question of what savings or, alternatively, additional costs will be experienced by the taxpayer. The implication of the White Paper is, of course, that the decreased levels of crime and disorder it promises will save taxpayers’ money by reducing the costs of policing.

5.20.2 Experience from abroad suggests, however, that the opposite is more likely to be case. Professor Stockwell’s comments are of particular relevance, and raise the question of where the money is to be found to pay for any additional costs.

5.20.3 In our view, there is no acceptable case for forcing the ordinary taxpayer to subsidise late night opening. We believe that the obvious source of the money are the licensed premises themselves: there should be a special charge for late trading licenses, large enough to cover any additional costs.

5.20.4 An essential requirement for such a system to operate is that the licensing changes be carefully and closely monitored with particular attention being paid to the cost elements.

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<sup>1</sup> The Prime Minister’s speech to the Women’s Institutes’ Triennial General meeting. 7<sup>th</sup> June 2000

<sup>2</sup> IAS response to the Consultation Paper on Possible Legislation to Combat Alcohol Abuse at Sea