



RESEARCH PAPER 00/16  
9 FEBRUARY 2000

# *Licensing (Young Persons)* *Bill 1999-2000*

**Bill 14 of 1999-2000**

This ballot Bill is to be debated on second reading on Friday, 11 February 2000. It is first on the list for that day. The Bill applies only to England and Wales.

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## Summary of main points

Attempts to control the access of children to alcohol by licensing premises where it is available, while not criminalising its consumption, have resulted in provisions which are complex and perceived to be inconsistent. The introduction of a new range of drinks described generically as alcopops, which are particularly attractive to young people, focused public attention on the consumption of alcoholic drink by teenagers. Proof of age cards have been introduced to help retailers identify those to whom alcoholic drink may be sold, and those who are under age. The case of *DDP v Russell* in 1997 created a loophole in the application of the law to people who work for chains of off-licences with the effect that they cannot be prosecuted as servants of the licensee for offences of selling alcohol to people under 18. A tragic accident to a 14 year old in his constituency led Paul Truswell to seek to remedy the situation.

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## I Introduction

On 5 May 1998, speaking at the British Institute of Innkeeping annual lunch, Home Office Minister George Howarth announced a thorough review of liquor licensing law. He said<sup>1</sup>

The time is right to blow away the cobwebs in British life by modernising the liquor licensing system.

Our first task is to examine the current system and come up with practical proposals for change which will command wide support from both the public and industry

Paramount in drawing up proposals will be balancing the rights of business and consumers with residents' rights to be free from disorder and violence, or other kinds of disturbance.

This will be a major task and will take time if it is done properly.

All licensing issues, including what types of licence there should be, who should license, licence hours and conditions, procedures and enforcement would be looked at in the review. There is to be full public consultation when proposals for change have been drawn up and a white paper is to be expected "early in the new year".<sup>2</sup>

As far as under age drinkers are concerned, however, a package of measures which had been agreed with industry interests was announced on 17 July 1997 by the Ministerial Group on Alcopops (see also p 20), chaired by George Howarth. The proposals included

- Allowing the police to confiscate alcohol from under 18s drinking in public
- Enabling test purchases to be made in order to detect retailers who break the law by selling to under 18s
- Making it an offence for adults to buy alcohol from a shop or off-licence at the request of an unsupervised youngster.

When the next progress report of the ministerial group was published on 25 November 1998<sup>3</sup> the first of these proposals had been implemented by the bringing into force on 1 August 1997 of the *Confiscation of Alcohol (Young Persons) Act 1997*, which was promoted by Dr Robert Spink and received Royal Assent just before the general election. The Act is not intended to prevent the consumption of alcohol at picnics etc; but is seen as a crime prevention measure, a way of removing alcohol before it becomes a source of trouble. Its provisions are seen as complementary to the model bye law which may be adopted by local

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<sup>1</sup> Home Office press notice, 166/98

<sup>2</sup> HC Deb 6 December 1999 vol 340, c 381W

<sup>3</sup> Home Office press notice 467/98

authorities to make it an offence to continue to drink alcohol in designated public places after being asked to stop by a police officer.

The statement of 25 November 1998 also reiterated the Government's commitment to the other proposals on test purchases and adults acting as agents for children in the purchase of alcohol. A new initiative announced was the intention to close a loophole in the law which prevents employees of big retail chains being prosecuted.

It is this defect which the present Licensing (Young Persons) Bill seeks to remedy.

## II Background

### A. Justices' licences and permitted hours

The sale by retail of intoxicating liquor is controlled by the licensing of outlets which allows restriction by age and by the imposition of permitted hours for the sale of alcohol. Licences are granted by a committee of licensing justices and are of two main kinds: on-licences or off-licences. A justices' on-licence usually includes permission to sell by retail for consumption off the premises, unless a condition is attached preventing this. A justices' off-licence authorises the sale of intoxicating liquor for consumption off the premises only.

The principal Act is the *Licensing Act 1964* (the 1964 Act) which was a consolidation measure. It has been amended since, principally by the *Licensing Act 1988* which introduced significant extensions to weekday opening hours. Permitted hours are now as follows:

#### On-licences

Weekdays other than Christmas Day or Good Friday	11am to 11pm
Sundays other than Christmas Day and on Good Friday	12 noon to 10.30pm
Christmas Day	12 noon to 3pm and 7pm to 10.30pm

#### Off-licences

Weekdays excluding Christmas Day or Good Friday	8am to 11pm
Sundays other than Christmas Day	10am to 10.30pm
Christmas Day	12 noon to 3pm and 7pm to 10.30pm
Good Friday	8am to 10.30pm

## B. Children and access to alcoholic drink

The law about the consumption of alcohol and the presence of children in licensed premises is complex. A child may not consume alcoholic drink in a bar, but may do so in other parts of the premises which are not a bar. Section 5 of the *Children and Young Persons Act 1933* provides that it is an offence to give alcoholic drink to any child under 5, unless for medical purposes. This prohibition is not confined to licensees nor to licensed premises but applies to any person in any place, including the home. It is not illegal for an adult to purchase intoxicating liquor for consumption by a person under 18. It is an offence for an adult ‘knowingly’ to buy such drink for consumption in a bar, but a person entering an off-licence to buy liquor for persons under 18 technically commits no offence, nor does the licensee who sells to him. This was decided in the case of *Woby v B & O (Juveniles)*, [1986] Crim LR 183, where it was held that the offence of selling to minors had to take place in licensed premises. The licence holder had sold to an adult so no offence had been committed and the young people were not in the shop and any offence they might have committed (attempting to buy) again had to take place on licensed premises. In Scotland there is a prohibition on agency – where a person ‘knowingly’ acts as an agent for a person under 18 in the purchase of alcoholic liquor, wherever that purchase takes place.<sup>4</sup>

As far as off-licences are concerned, there is no restriction on the age at which children may be present in a shop licensed to sell alcohol for consumption off the premises, but the same prohibition in section 169 of the 1964 Act on sales of, or attempts to buy alcoholic drink applies to off-licences as to on-licences.

If a children’s certificate under section 168A of the 1964 Act is in force for on-licensed premises, a child under 14 may be present in a bar, provided he or she is in the company of a person who is 18 or over. The licensee is guilty of an offence if he allows a person under fourteen to be in the bar during permitted hours, unless he can show that he exercised all due diligence to prevent this or that the young person had apparently reached that age.

Section 169 of the 1964 Act provides that the holder of a justices’ licence, or his servant, “shall not sell intoxicating liquor to a person under eighteen or knowingly allow a person under eighteen to consume intoxicating liquor in a bar, nor shall the holder of a licence knowingly allow any person to sell intoxicating liquor to a person under 18”. There are relaxations of this in pubs where meals are served. Section 169(4) provides that the general prohibition does not prohibit the sale to or purchase by a person who is over 16 of beer, porter, cider or perry (but not wine in England and Wales) for consumption at a meal in a part of the premises which is not a bar and is usually set apart for the service of meals. Under section 201 of the 1964 Act, a bar includes any place exclusively or mainly used for the sale and consumption of intoxicating liquor. Section 171 excludes from that definition any part of the premises usually set apart for the services of table meals, where the supply of alcohol is restricted to those who are having such meals and its consumption is ancillary to the meals.

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<sup>4</sup> *Licensing (Scotland) Act 1976*, s 68

The general provisions are usefully tabulated in Alcohol Concern's Fact Sheet no 30: Alcohol and the law:

Age	Law
under 5	may not be given alcohol except on medical orders
5+	may consume alcohol at home or in registered private clubs or in any public place (subject to local bye-laws)
under 14	may not be present in the bar of licensed premises unless accompanied by a person over 18, it is before 9pm and a <b>children's certificate</b> relating to the bar is in force
14+	may be in the bar of licensed premises during permitted hours
16+	may purchase beer, porter, cider or perry with a meal in an eating area on licensed premises. In Scotland wine can also be bought
under 18	may not purchase or be supplied with or consume alcohol in a bar
under 18	may not purchase alcohol from an off-licence, supermarket or wholesaler
under 18	may not be employed in a bar of licensed premises
under 18	in Northern Ireland only, may not enter licensed premises
any age	may be present in registered private members' clubs

The complexities of the system have attracted criticism. As long ago as 1972 the Erroll Committee commented:<sup>5</sup>

We received a considerable number of complaints about the complexity of the present law and the odd results to which it can give rise. The Brewers' Society, for example, pointed out that, under the present law, a 16 year old boy, unaccompanied by an adult, may take his 8 year old sister into a licensed restaurant and provide her with beer or cider to drink with her meal. This is because the provision in section 169 of the Act allowing the sale of beer, porter etc. to persons over 16 years of age does not require that the drink must be bought for the purchaser's own consumption. Equally, it is quite possible for an adult to buy a drink in the bar of a public house and then give it to someone under 18 to drink in a room elsewhere on the licensed premises which is not a bar. Similarly, the present law allows children under 16 to drink at a meal in a licensed restaurant provided the drinks are bought by an adult.

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<sup>5</sup> Report of the Departmental Committee on Liquor Licensing, Chairman: the Rt Hon Lord Erroll of Hale, December 1972 Cmnd 5154, para. 12.27



More recently, the Better Regulation Task Force also drew attention to perceived inconsistencies:<sup>6</sup>

The existing laws regarding the purchase of alcohol by parents for children of 14 and above and by young people themselves differentiate between drink bought with and without meals. It is difficult to see how this apparent inconsistency is justified. It is an offence for someone of 17½ to purchase beer in a bar but not for a parent to buy the same beer for a 13 year old if he/she is in the restaurant area or beer garden.

On the other hand, it seems illogical that it is an offence to purchase alcohol in a bar for someone under 18 but for no equivalent offence to exist for off-sales in the same situation. We are not proposing a solution in terms of products and ages but the Government needs to consider afresh the rationale for the present differences particularly as a 'café society' develops and the old distinctions between pubs and restaurants blur.

The Masham report of 1987 concluded that the minimum age of 14 for entry to a bar be retained, but stated that there was merit in allowing young people under the age of 18 to be introduced to alcohol in the supervised setting of the home. In 1999, the Hospitality and Leisure Industry submission to the Home Office for the general review of licensing law recommended that there should be a presumption in favour of children being allowed in all licensed premises and this was endorsed by the All-party Parliamentary Beer Group in the Report of the Licensing Law Reform Panel, October 1999.

On 12 November 1999 a Department of Trade and Industry press notice revealed the results of a research project which had found that pubs, bars and restaurants were charging three times more than off-licences and supermarkets for soft drinks and that 75% of pubs were not displaying the prices adequately.

### **C. The *Licensing Act 1988* and Section 169 of the 1964 Act**

The 1988 Act was largely concerned with the extension of permitted hours, but at report stage in the House of Commons amendments to section 169 of the 1964 Act were introduced to implement some of the recommendations of the Working Group on Young People and Alcohol of the Standing Conference on Crime Prevention under the chairmanship of Baroness Masham (the Masham Report).

For easy comparison with the present Bill the whole of section 169 of the 1964 Act, as amended, which deals with sales of intoxicating liquor to or by persons under 18, is reproduced below. Note that it is also an offence to attempt to buy or consume alcohol in a bar on the part of the under-age person, though there are very few prosecutions – see p 18.

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<sup>6</sup> Licensing legislation, July 1998

**169 Serving or delivering intoxicating liquor to or for consumption by persons under 18**

(1) Subject to [subsection (4)] of this section, in licensed premises the holder of the licence or his servant shall not ... sell intoxicating liquor to a person under eighteen or knowingly allow a person under eighteen to consume intoxicating liquor in a bar nor shall the holder of the licence knowingly allow any person to sell intoxicating liquor to a person under eighteen.

(2) Subject to subsection (4) of this section, a person under eighteen shall not in licensed premises buy or attempt to buy intoxicating liquor, nor consume intoxicating liquor in a bar.

(3) No person shall buy or attempt to buy intoxicating liquor for consumption in a bar in licensed premises by a person under eighteen.

(4) Subsections (1) and (2) of this section do not prohibit the sale to or purchase by a person who has attained the age of sixteen of beer, porter, cider or perry for consumption at a meal in a part of the premises usually set apart for the service of meals which is not a bar.

[(4A) Where a person is charged under subsection (1) of this section with the offence of selling intoxicating liquor to a person under eighteen and he is charged by reason of his own act, it shall be a defence for him to prove

- (a) that he exercised all due diligence to avoid the commission of such an offence; or
- (b) that he had no reason to suspect that the person was under eighteen.

(4B) Where the person charged with an offence under subsection (1) of this section is the licence holder and he is charged by reason of the act or default of some other person, it shall be a defence for him to prove that he exercised all due diligence to avoid the commission of an offence under that subsection.]

(5) Subject to subsection (7) of this section, the holder of the licence or his servant shall not knowingly deliver, nor shall the holder of the licence knowingly allow any person to deliver, to a person under eighteen intoxicating liquor sold in licensed premises for consumption off the premises, except where the delivery is made at the residence or working place of the purchaser.

(6) Subject to subsection (7) of this section, a person shall not knowingly send a person under eighteen for the purpose of obtaining intoxicating liquor sold or to be sold in licensed premises for consumption off the premises, whether the liquor is to be obtained from the licensed premises or other premises from which it is delivered in pursuance of the sale.

(7) Subsections (5) and (6) of this section do not apply where the person under eighteen is a member of the licence holder's family or his servant or apprentice and is employed as a messenger to deliver intoxicating liquor.

[(8) A person guilty of an offence under this section shall be liable to a fine not exceeding level 3 on the standard scale; and on a person's second or subsequent conviction of such an offence the court may, if the offence was committed by him as the holder of a justices' licence, order that he shall forfeit the licence.]

[(10) ...]

A fine of level 3 on the standard scale is £1,000.

The *Licensing Act 1988* removed the word “knowingly” from the offence of selling intoxicating liquor to a person under 18 in section 169(1).

The purpose of the word was to protect a licensee from genuine mistakes about the age of his customers, but its inclusion was perceived to have made it difficult to secure a conviction since it had to be proved that there was express knowledge that the customer was underage, or deliberate inattention to the probability. The Masham report adds that it implies that “the duty of a licensee to verify ages is relatively slight” [para 153]. The change was explained by Home Office Minister Mr Hogg when he introduced amendments on 3 February 1988:<sup>7</sup>

I think that it would help if I spoke only briefly on the new clause and tried to identify only its major elements, because I know that many hon. Members want to participate in the debate. The main change that we propose is to delete the requirement of “knowingly” from the first limb of the offence in section 169(1). The justification for making that change is that it is too difficult to prove, in the context of that offence, that the person had the required knowledge. One of two things has to be proved in 'the context of that offence - either express knowledge that the customer is under age or a deliberate inattention to that possibility; closure of one's eyes to a fact would probably constitute the required degree of knowledge.

It is probably because of the difficulty of establishing the offence that the subsection has given rise to very few convictions. In 1986-the last year for which we have records - there were 165 convictions under that subsection in England and Wales. Bearing in mind that there are about 145,325 licensees, that is not very many. I recommend to the House that it delete the word “knowingly” from the first offence in subsection 1. That would transfer a burden to licensees that they did not previously carry. One has then to ask whether the offence should be an absolute offence or to one which there should be a defence. That matter exercised the members of the committee, some of whom took the view that it should be an absolute offence to which there should be no defence. I do not think that it would be right in principle or practice to make it an absolute offence. Therefore, we have introduced a defence, which is set out in the new clause.

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<sup>7</sup> HC Deb vol 126 c 1009

The defence is set out in section 169(4A) and 4(B) which makes provision, respectively, for a person charged with the offence by reason of his own act and for a licence holder charged by reason of the act or default of some other person. See above, p 12. The latest figures for convictions are provided on p 16.

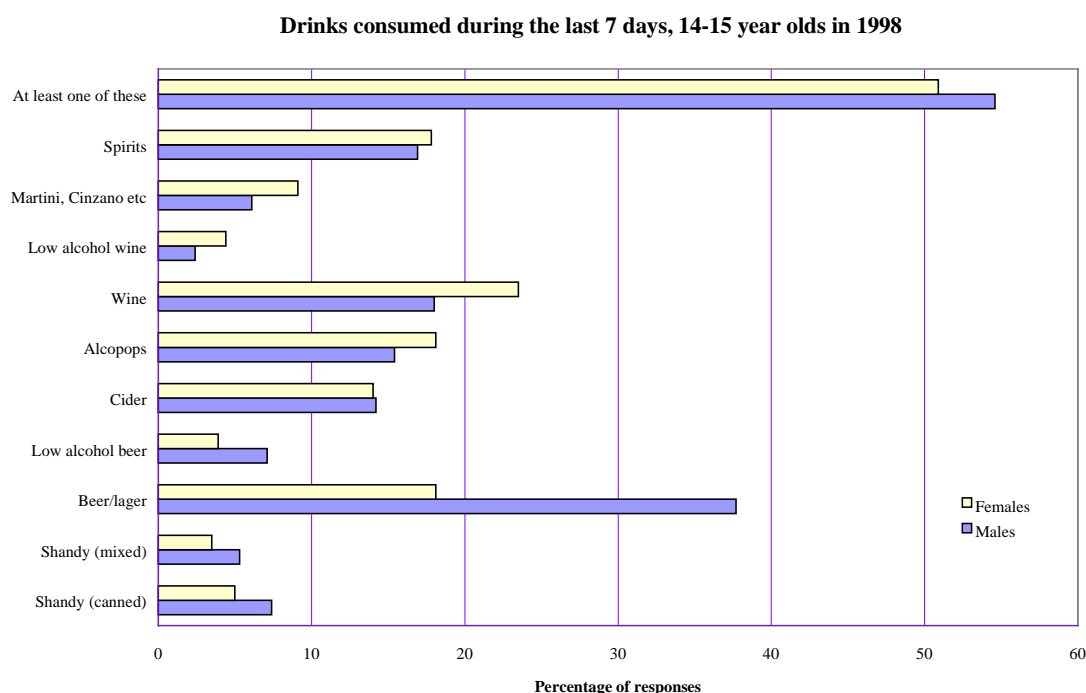
The 1988 Act also raised the level of fines for the offence from level 2 on the standard scale to level 3 from £100 to £400 at the time.

## D. Alcohol consumption by young people

According to Department of Health statistics, in 1996 27% of pupils aged 11-15 had an alcoholic drink in the last week and over half of 15 year olds did so. The average consumption was almost two units a week, or five units a week for 15 year olds<sup>8</sup>.

The Schools Health Education Unit (SHEU) provides more recent data. Each year it asks young people aged 12-13 (Year 8) and 14-15 (Year 10) about their health related behaviour, including their alcohol consumption<sup>9</sup>.

In 1998 over half of Year 10 pupils and over 30% of Year 8 pupils had consumed some alcoholic drink in the past 7 days. Wine is the most popular drink for females, and beer or lager for males but many Year 10 pupils also drink alcopops, spirits and cider:



The SHEU asks about the quantity and frequency of young peoples' drinking.

<sup>8</sup> Statistics on Alcohol: 1976 onwards. Department of Health Statistical Bulletin 1999/24 October 1999

<sup>9</sup> Young People in 1998 SHEU 1999

In 1998 almost a fifth of 14-15 year old males and around 10% of females had drunk over 10 units in the past 7 days. Quantities of alcohol drunk rose during the early 1990s, peaked in 1995/96 and are now slightly lower (but there are difficulties in estimating measures and units)<sup>10</sup>.

As we have seen, in 1998 just under half of 14-15 year olds and just under 70% of 12-13 year olds had not drunk at all in the week before they were questioned. Of those 14-15 year olds who *had* drunk alcohol, half (a quarter of all surveyed) had done so on just one day in the past week. The frequency of drinking has fallen slightly after a peak around 1995, a similar pattern to quantity of drinking.

The SHEU also asks the young people about where they obtain alcohol and where they drink it. A fifth of 14-15 year olds and around 6 or 7% of 12-13 year olds had bought alcohol in the last seven days. The off-licence is the most important source of alcohol.



Off-licence purchases increased from 1986 to 1995, and declined thereafter. Looking at *drinkers only*, around 35% obtained their alcohol from an off-licence in 1995, but more like 20% did so in 1998<sup>11</sup>.

The most common places for young people to drink are at home or at a friend or relative's house. Around a third of all 14-15 year olds, or over half of those who drank, did so at home.

<sup>10</sup> *ibid* p 76

<sup>11</sup> *ibid* p.78

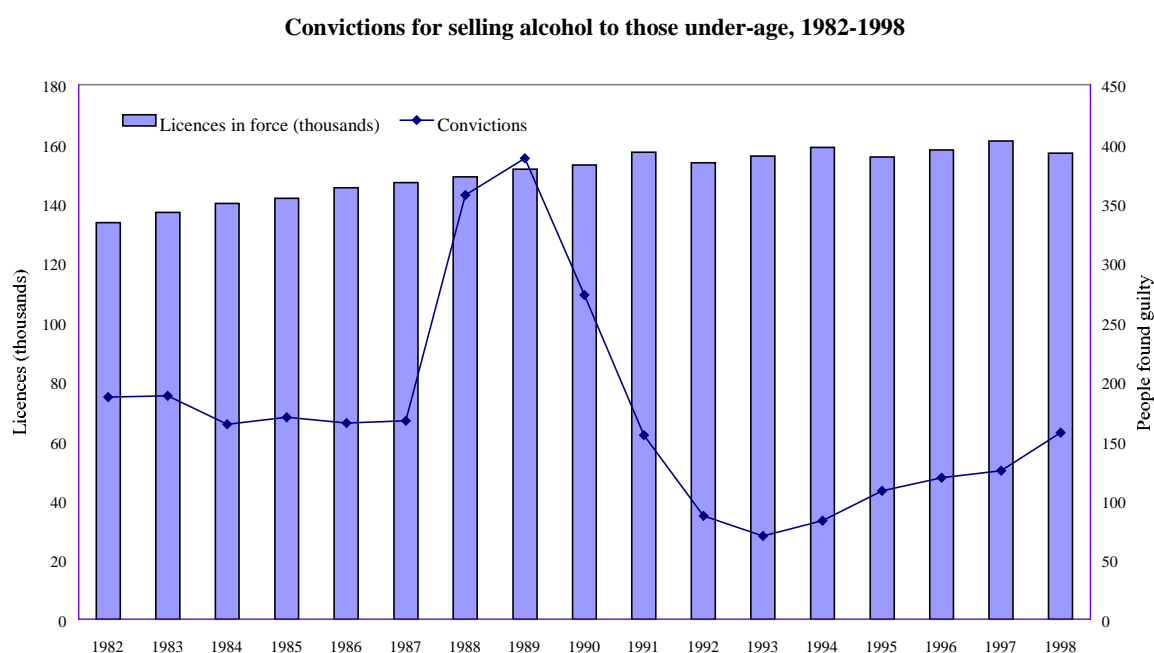
Around a fifth of all 14-15 year olds had drunk outside in a public place during the past seven days in 1998, but the prevalence of this has fallen since 1995.

Over half of 14 to 16 year olds in a London study reported buying an alcoholic drink at some time<sup>12</sup>. The most common place for purchasing alcohol was off-licences and small stores. Over half of the respondents who had bought alcohol said they had never been asked for ID to prove their age, or could persuade a stranger, older brother or sister to purchase alcohol for them.

## E. Licensing and prosecution statistics

As at June 1998, there were 111,600 on-licensed premises, slightly down on 1997 but about 7,500 more than a decade before and over 20,000 more than in 1980. At the same date there were 45,500 off-licensed premises, around the same as ten years ago<sup>13</sup>.

The graph summarises trends in the number of licensees found guilty for selling alcohol to under age drinkers, which is not related to the number of licences in force.



- From 1982 to 1986 400-500 people each year were found guilty or cautioned under ss.169(1) of the 1964 Act, for selling intoxicating liquor to persons under the age of 18.<sup>14</sup>

<sup>12</sup> Stillwell et al., 1998 quoted in Alcohol and Crime: Taking Stock Home Office Policing and Reducing Crime Unit Crime Reduction Research Series Paper 3 1999

<sup>13</sup> Liquor Licensing England and Wales Home Office Statistical Bulletin 27/98, December 1998. (Liquor licensing statistics are now collected only triennially.)

<sup>14</sup> Offences of Drunkenness England and Wales 1992 Home Office Statistical Bulletin 11/94 June 1994

- In 1989 prosecutions peaked. 1,050 licensees were dealt with; 60 were cautioned, but around 750 were prosecuted and 390 convicted.
- After this the number of prosecutions fell each year until 1993-94, since when figures have been rising again. Over 300 people were prosecuted in 1998 and 160 found guilty.
- There seems to be a recent move away from cautioning. While for most years the cautioning rate has been around 60% (people cautioned as a percentage of all those found guilty or cautioned), only 76 people were cautioned in 1998 while at the same time prosecutions and convictions rose slightly, giving a cautioning rate of only a third.

### Persons prosecuted and convicted for selling intoxicating liquor to persons under 18

England and Wales 1982-1998

	Prosecutions	Convictions	Cautioned	Found guilty or cautioned	Cautioning rate	Licences in force (thousands)
1982	n/a	187	295	482	61%	134
1983	n/a	188	274	462	59%	137
1984	n/a	164	249	413	60%	140
1985	n/a	170	315	485	65%	142
1986	n/a	165	246	411	60%	145
1987	n/a	167	n/a	n/a	n/a	147
1988	673	357	n/a	n/a	n/a	149
1989	747	388	657	1045	63%	152
1990	574	273	454	727	62%	153
1991	309	155	245	400	61%	157
1992	195	87	189	276	68%	154
1993	156	70	n/a	n/a	n/a	156
1994	137	83	n/a	n/a	n/a	159
1995	198	108	n/a	n/a	n/a	156
1996	251	119	178	297	60%	158
1997	214	125	171	296	58%	161
1998	310	157	76	233	33%	157

Sources *HC Deb 4 March 1997 c537w*

*Liquor Licensing England and Wales Home Office Statistical Bulletin 27/98, December 1998.*

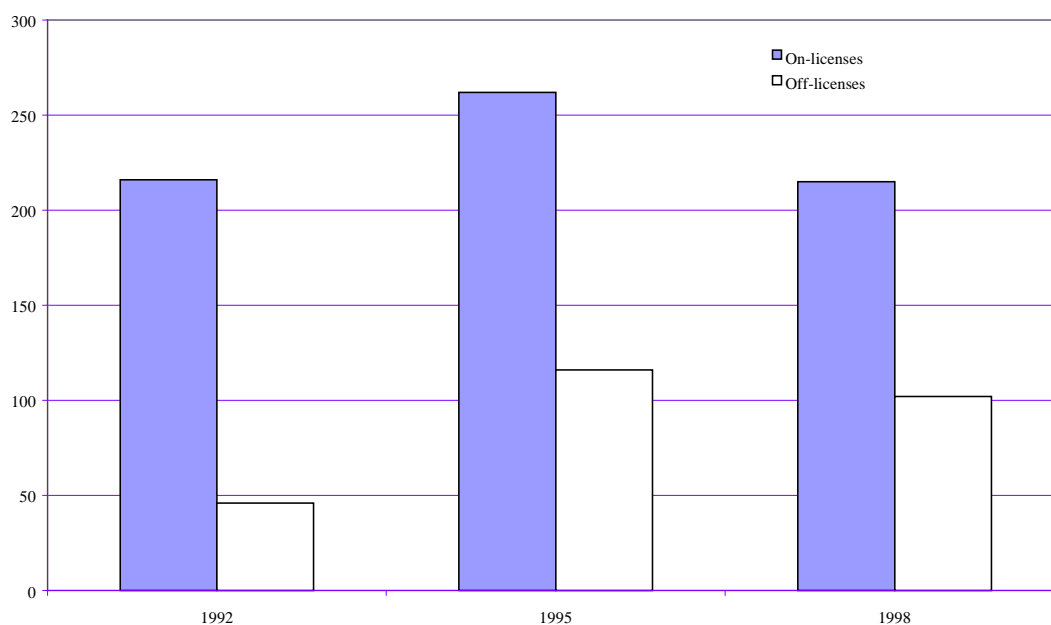
*Offences of Drunkenness England and Wales 1992 Home Office Statistical Bulletin 11/94 June 1994*

n/a not available

The data do not record the type of licensee involved. In the twelve months to June 1998 409 on-licences and 122 off-licences were revoked but this was for various reasons<sup>15</sup>.

<sup>15</sup> Liquor Licensing England and Wales Home Office Statistical Bulletin 27/98, December 1998. (Liquor licensing statistics are now collected only triennially.)

Licenses revoked, 1992-1998



Under ss.169(2) of the 1964 Act the young person involved can be prosecuted for buying intoxicating liquor. The number found guilty each year fell drastically over the decade between 1982 and 1992 from almost 2,000 convictions to only 34. Cautions fell from 1,600 to 600 a year over the same time period<sup>16</sup>. In 1998, there were 143 cautions and 24 convictions.<sup>17</sup>

## F. Proof of age schemes

In 1998, the Justices' Clerks' Society published a *Good Practice Guide* on under age drinking to help the courts to play their part in resolving the problems raised by under age drinking. They regarded the requirement in section 3 of the 1964 Act that an applicant for a justices' licence be a fit and proper person as one which demands a proper understanding of the duties and responsibilities which a licence confers and that in particular he should be able to satisfy the committee that he would be alert to prevent under age drinking: adoption of a proof of age scheme was top of their list of safeguards:

2.13 We therefore RECOMMEND that committees question prospective licensees about their understanding of legal requirements and that, in particular, licensees are asked.

- (a) to adopt a proof of age scheme and publish it prominently on their premises.
- (b) to attend a British Institute of Innkeeping course or one of a similar standard.

<sup>16</sup> Offences of Drunkenness England and Wales 1992 Home Office Statistical Bulletin 11/94 June 1994

<sup>17</sup> Source: Crime and Criminal Justice Unit, Home Office



- (c) to adopt the Portman Group code of practice and follow any advice given in the regular bulletins of that group on the removal from sale of certain products.
- (d) to show whether they are aware of the consequences of failure to ensure that persons under age are not sold alcohol.

2.14 Section 4 of the Licensing Act 1964 allows licensing justices to attach conditions to the grant of a justices' on licence. The court may wish to consider whether, and to what extent there is a need to use conditions to regulate the licence so as to ensure that under age drinking is prevented. If satisfied that conditions are needed, the court should impose them.

Such conditions could be applied only to the grant of new on-licences; those which may be applied on renewal or transfer are limited and are specified in the Act. Conditions may not be applied to off-licences, but many such licences are granted subject to undertakings.

The reduction of under-age sales of all kinds was one argument put forward in the discussion in 1995-96 for the introduction of a national identity card. A consultation paper was issued in 1995 (Cm 2879) and the Home Affairs Committee considered the subject in their fourth report of 1995-96, HC 172. They found that there was general support from the retail trade because in most cases the onus was on the retailer – of alcohol, cigarettes, fireworks, videos, for example – not to sell or hire to under age customers. Home Secretary Michael Howard announced on 22 August 1996 the Conservative Government's intention to introduce a voluntary identity card linked to the photocard driving licences.<sup>18</sup> The 1997 General Election intervened and the new Government's response to questioning was that the possibility was being considered. On 6 December 1999 the Home Secretary, Jack Straw, said<sup>19</sup>

“I have examined the issue with great care and our view is that a national identity card would not be appropriate”

In May 1990, the Portman Group<sup>20</sup> launched Prove It!, a national voluntary proof of age photocard scheme. Every application has to be sponsored by a responsible adult – doctor, teacher, magistrate etc – and the age of every applicant is verified. The scheme was free at first, but since 1997 retailers have been charged £58 plus vat for a pack containing a poster, sample card and 50 application forms to help cover the cost of processing applications.

On 17 January 2000, the Portman Group announced the results of a year long review of the scheme and the intention to share costs more evenly between cardholders and retailers. From 14 February, new cardholders have been charged £5 and retailers subscribing to the scheme charged £5 plus vat.

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<sup>18</sup> Identity Cards, Cm 3362 August 1996

<sup>19</sup> HC Deb vol 340 c 565

<sup>20</sup> A consortium of companies involved in the production of alcoholic drink whose member companies are Allied Domecq, Bass, Bacardi-Martini, Bulmers, Campbell Distillers, Pernod-Ricard, Diageo, Scottish and Newcastle, Seagram and Whitbread. Its purpose is to promote sensible drinking and help prevent alcohol misuse

Since the scheme was introduced, kits to the value of about £400,000 have been bought. Almost 500,000 proof of age cards have been issued since the scheme started in 1990, with a total of nearly 62,000 in 1999. The review found that under-age sales represent a serious and growing issue for retailers, the vast majority of whom would support the introduction of a national Government scheme.<sup>21</sup> In a press statement the Director of the Group, Jean Coussins, said that the new Youth Card being developed by the DfEE could provide the perfect opportunity at no cost to the taxpayer.

The Youth Card is being developed as recommended by the Social Exclusion Unit from the Learning Card arrangements, by which all young people in their final year of compulsory education are given a personal card to represent their entitlement to further learning and remind them of their continual access to careers guidance and education. A DfEE press notice of 28 September 1999 records the Secretary of State's welcome for the development of a Youth Card using smart technology as part of the Department's *Connexions* strategy aimed at ensuring that young people should stay on in learning after 16 and achieve a worthwhile qualification by the age of 19. The new card would be used for enrolment and attendance monitoring, the validation of education maintenance allowances, would offer a range of discounts and be "an electronic key to personal information".

1999 also saw the launch of another national retail proof of age scheme: the Citizen Card. These cost £5 on issue and renewal costs £3. Parental consent is required for applicants under 18 and photographs of the applicant have to be endorsed by a person in authority or professional person who may not be a relative or anyone associated with the retail trade. The cards are claimed to be forge-proof and offer extra benefits such as free phone calls and vouchers for sporting and musical events.

## **G. Alcopops**

The introduction of Alcopops in 1995 is seen by Alcohol Concern as a factor which has accelerated an already discernible rise in drinking among children and teenagers. There is no formal definition of an alcopop; they range from alcoholic milk shakes to fizzy fruit flavoured mixers and some, such as Wild Brew, contain herbal stimulants. Most have an alcohol content of around 5% which is stronger than normal strength beers. Alcohol Concern describes as follows the reasons for the controversy surrounding this marketing phenomenon:<sup>22</sup>

### **Why are they so controversial?**

- Although the producers argue that they are aiming at the 18-25 year old market there is little doubt that alcopops appeal to under 18s.

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<sup>21</sup> Portman Group press release 17.1.00

<sup>22</sup> Information Unit Factsheet 35

- Research carried out by the Health Education Authority has shown that "teenagers saw alcopops as being more appealing than traditional drinks - more refreshing, better tasting, less likely to taste of alcohol, trendier and suitable for teenage girls"
- Before alcopops were launched government research had shown that young people are starting to drink at an earlier age and that they are drinking more heavily. Alcopops appeal to young palates used to sweet soft drinks.
- An established control on young people's drinking has been that youngsters find traditional drinks unpalatable. With alcoholic lemonade cola, flavoured milk etc, this control has been removed. Alcopops are also more likely to appeal to under 18s than traditional drinks because of their packaging and names. Typically this includes vibrant colours, rebellious or sexy names and cartoon characters. Young people have little experience of alcohol and little understanding of how it can damage developing bodies and affect behaviour.

As a result of the criticism of such products the Portman Group issued a voluntary codes on the naming, packaging and merchandising of alcoholic drinks in April 1996. The code was strengthened in September 1997 after the Government had responded to the initial consultation exercise by calling for a range of additional controls on inappropriate names, the use of artificially bright colours in either the product or packaging or tastes and textures which mislead about the true alcoholic content. The need to remind sales staff of their responsibilities and to make alcohol less accessible to children in shops was also stressed.<sup>23</sup>

The July 1997 Statement by the Ministerial Group on Alcopops reported that

The Government takes the view that a number of these products have been marketed in an irresponsible way and that some producers and retailers have lost sight of their duty to their fellow citizens.

Complaints under the Code are considered by the Independent Complains Panel and retailers are notified of products which break the Code through a Retailer Alert Bulletin requesting that after existing stocks have been exhausted products are not re-stocked unless and until they have been amended to comply with the Code.

Alcohol Concern is sceptical about the independence and effectiveness of the scheme, particularly its lack of sanctions, and advocates consideration of a statutory product licensing scheme.

A press release issued by the Portman Group on 13 December 1999 records that the latest quarterly report on the Code of Practice shows no new complaints in the last quarter. Since the height of public concern over alcopops 85 complaints have been dealt with, of which 58%

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<sup>23</sup> Statement by the Ministerial Group on Alcopops, Home Office, July 1997

were upheld. 35 products had labels which breached the code, 25 had unacceptable names, 10 had containers whose gimmicks, style or shape associated the drink with anti-social behaviour. The biggest single reason for upholding a complaint was appeal to under-age drinkers: 41%. Commenting on the report, the Portman Group's Director said that companies now sought pre-launch advice at the early stages of product design rather than waiting for problems to emerge.

## **H. The Russell case and the definition of 'servant'**

Section 169(1) of the 1964 Act provides that it is an offence for a licensee or his servant to sell intoxicating liquor to a person under 18 years of age, and the licensee has a defence under sub-section 4(A) if he is charged by reason of the act or default of some other person if he can prove that he exercised all due diligence to avoid the commission of an offence. Much, however, turns on the definition of the word 'servant', since the word "knowingly" applies to sales made by another person not a servant, whereas the sale by the licensee or his servant is an absolute offence and the prosecution has only to establish that there was a sale, that what was sold was intoxicating liquor and that the purchaser was under age. In the case of *Russell v DPP* [1997] Licensing Review (April) QBD, a sale in a branch of an off-licence chain had been made by a trainee to a person under 18 on the authority of the area manager because he was carrying a night club membership card. The trainee branch manager was convicted by the Reigate magistrates as a servant of the licensee, who was the regional director of the company. On appeal, it was submitted to Guildford Crown Court that the appellant was not the servant of the licence holder and that he and the licence holder were both servants of the company owning the chain. The Crown Court upheld the justices' decision, but the matter was referred for consideration to the Divisional Court who found in answer to the question whether the appellant was properly to be regarded as the servant of the licence holder for the purposes of section 169(1) of the 1964 Act, that the answer was 'no'. It was argued that the company that engaged him paid his wages and had the right to terminate his employment. He was thus, in the opinion of the court, a servant of the company and the fact that another servant of the Company might exercise control over him as to the manner in which he performed his duties did not make him the servant also of that fellow employee.

*Paterson's Licensing Laws 1999* comments that this strengthens the position of vendors and that the principles would be capable of broad application. The authors suggest that in the case of limited companies it will rarely be possible to find that a junior employee who is not a licensee is acting as a servant of the latter for the purposes of s.169(1) and that if there is no strict employer/employee relationship the vendor would be acting rather as agent of the licensee (p.358).

### III Proposals to reverse the Russell judgment

In April 1998 Paul Truswell presented a Licensing (Amendment) Bill 1997-98, described in the Explanatory Memorandum as one which reflected modern forms of ownership in the licensed trade by extending the class of persons who may commit offences under licensing law to all those working in licensed premises. It would have amended section 169(1) and (5) of the 1964 Act by substituting “no holder of the licence or other person shall himself or by his agent or servant” for “the holder of the licence or his servant shall not”. The Bill was not debated on second reading, but was briefly considered in Standing Committee C on 15 July 1998, by which time it was clear that it would go no further. Home Office Minister George Howarth said:<sup>24</sup>

I strongly support the principle behind the Bill, but the advice that I have received is that that in its current form, it is unworkable and would need to be amended subsequently. In his realistic way, my hon. Friend has conceded that the vagaries of the parliamentary process mean that it is unlikely to proceed beyond today. However, I can confirm that Home Office officials are considering further the matters raised by my hon. Friend.

In the meantime on 24 June 1998 Mr Truswell presented a Sale of Alcohol to Young Persons (Prohibition) Bill under the ten minute rule. This was not printed.

In the following session Chris McCafferty, who won a place in the ballot for private Members’ Bills, introduced the Licensing (Young Persons) Bill 1998-99. This sought not only to redefine who can commit the offences of selling intoxicating liquor to a person under 18 or allowing such a person to consume alcohol in a bar, but also to implement other parts of Government policy by allowing test purchases of alcohol by persons under 18 and by creating the offence of buying alcohol drink on behalf of a person under 18.

The second reading debate took place on 16 April 1999<sup>25</sup> when the Minister George Howarth welcomed the Bill and made a plea that the procedures of the House should not be used to stop it making progress. However, David Maclean and Eric Forth both signalled their concerns about the test purchase provisions, which the latter described as “entrapment” and the debate was adjourned.

In the ballot for private Members’ Bills at the beginning of 1999-00, Paul Truswell won third place and has introduced the Licensing (Young Persons) Bill, Bill 14, which replaces section 169 of the 1964 Act as amended – for text, please see page 12. It provides that a person shall be guilty of an offence if, in licensed premises, he sells intoxicating liquor to a person under 18 or knowingly allows the sale, consumption, or delivery of alcohol for off-premise consumption. Details are provided in the explanatory notes, which accompany the Bill.

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<sup>24</sup> SC Deb c 9

<sup>25</sup> HC Deb vol c 534ff

In the Standing Committee Debate on his first Bill, Paul Truswell described the event which provided the main impetus for his attempts to close the Russell loophole:

**Mr Paul Truswell** (Pudsey): Good morning, Mr. O'Hara. I do not intend to take up too much of the Committee's time. Some Committee members will be aware of the background to my introduction of the Bill, but I think that it is worth repeating it.

Last November a constituent of mine, Mr. John Knowles, came to my surgery and told me the tragic story of the death of his son, David. I should like to spend a few minutes telling the Committee that story.

David was 14. One evening in March 1997 he stayed on at school to watch his friends play football. After the game, the group of friends decided to go home via the centre of Pudsey. When they arrived there David's friends, who were still in their football kit, asked David to go and get them some alcopops. David complied and went to a nearby Threshers off-licence, where he was sold the alcopops that he requested. A few minutes after returning to his friends, David decided that he wanted some alcohol of his own. He returned to the same Threshers off-licence and was sold four cans of lager. David returned to his friends and they set off on the journey home.

In due course, they reached the busy Stanningley bypass, which forms part of the Leeds inner ring road. At that moment David, whom everybody who knew him has described as a very serious boy, suddenly shouted out "Let's run." He charged down the embankment, across the first part of the dual carriageway and onto the second part, where he was struck by a car. He died shortly afterwards from the massive injuries that he sustained.

The police quickly attended the scene and took statements from witnesses. As a result, they went to the Threshers off-licence in Pudsey, interviewed the staff and seized the security videos, which showed David being sold alcohol on two occasions within about five minutes. On the basis of the police report, the Crown Prosecution Service decided to mount a prosecution against the two members of staff who had sold David the alcohol. The Crown Prosecution Service decided not to pursue the licence holder, because it was felt that she had been able to demonstrate due diligence in that she had given adequate training to the two members of staff about the dangers of selling alcohol to minors.

The case came to the magistrates court on two occasions, on both of which it was deferred. On the third occasion the CPS announced that it was withdrawing the case. It did so because it had come up against a huge loophole, which my Bill seeks to close. Under section 169(1) of the Licensing Act 1964, a person can be prosecuted for selling alcohol to someone under the age of 18 if they are either the licence holder or the servant of the licence holder. The word "servant" has a very narrow definition in law. To be a servant, one has to be directly employed by the licence holder. In this case, the two members of staff were employed by a national company, Threshers, and not by the individual licence holder, who was their manager.

I do not want any Committee member to jump to the conclusion that my Bill is an emotional over-reaction to the tragedy that John Knowles told me about on that day when he visited my surgery. The loophole in the law has been known about for 30 years. It arose first in a case called *Brandish v. Poole* in 1968. Mr. Poole was a pub landlord who went to a football match, leaving his wife in charge of the bar. His wife sold cider to a 14-year-old and was subsequently charged, prosecuted and convicted. The appeal court at that time overturned the conviction because it held that Mrs. Poole was not her husband's servant in the legal sense: she was not directly and formally employed by him.

A more recent case, which has a greater bearing on that of David Knowles, was that of *Russell v. DPP* in December 1996. Russell sold alcohol to minors and was prosecuted and convicted. Again, however, the prosecution was overturned because Russell was held not to be the servant of the licence holder. He was employed by a national company called Unwins and not by the individual whose name appeared on the licence.

My Bill seeks to overcome the limitations of the word "servant" by introducing the word "agent", which has a much wider remit. That would have ensured that the prosecutions against the two individuals in the David Knowles case at least took place. No one can prejudge whether they would have been convicted, but the important point of principle is that the prosecution could at least have taken place.

I do not need to stress for the Committee the huge implications of the loophole. We all know that a tremendous proportion of alcohol that is sold nowadays is sold by off-licence companies and supermarkets.

Although the Committee cannot send the Bill any further because there is no more time for private Members' business in this Session, it can perform a useful task. It can show that the House acknowledges that there is a loophole, recognises its enormity and is determined that something be done to close it at the earliest opportunity.