



RESEARCH PAPER 03/27  
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# *The Licensing Bill* [HL]

Bill 73 of 2002-03

The *Licensing Bill* [HL], Bill 73 2002-03 brings together, under local authority control, public entertainments and alcohol sales. Committees of magistrates currently license the latter. A personal licence would be needed to sell alcohol from any place covered by a premises licence. Different permissions will apply to temporary events and qualifying clubs.

Implementing the proposals of *Time for Reform* (Cm 4696) a premises licence would incorporate operating conditions, including opening hours. In principle the latter could be 24 hours, 7 days a week.

The Bill extends to England and Wales.

Gavin Berman

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## Summary of main points

On 30 June 2001 there were 110,000 on-licensed premises, a fall of 1,300 from the number recorded in June 1998, the last time a full survey was carried out by the Home Office.

The number of off-licensed premises on 30 June 2001 was 44,700. This figure is approximately 700 below the figure recorded in 1998 and is the lowest total since 1986.

In 2000/01 there were over 5,000 new applications for on-licences and 2,350 applications for off-licences. In both cases around eighty five per cent were granted. Over this period a total of 183 licences were revoked – 132 on-licences and 51 off-licences.

The *Licensing Bill* [HL], Bill 73 2002-03 seeks to bring within a single system the licensing of alcohol sales, late night (non-alcoholic) refreshment, and of public entertainments. The latter include music, dancing, theatres and cinemas. Local authorities would administer the system, thus adding liquor licensing to their existing responsibilities for late night cafes and entertainment.

Committees of licensing justices (magistrates) administer the current liquor licensing system.

Government responsibility for licensing now lies with the Department for Culture, Media and Sport, which inherited the policy set out in *Time for Reform: proposals for the modernisation of our licensing laws* (Cm 4696, April 2000).

A single premises licence would cover all the relevant licensable activities; its attached operating conditions including the hours of opening – in principle up to 24 hours a day. Personal licences would permit the holder to sell alcohol from any licensed premises.

The Bill also provides a system of authorisations for qualifying clubs and for temporary events – the latter replacing the present system of occasional permissions and occasional licences.

Religious, charitable and live music organisations have expressed concerns over bureaucracy and cost and the elimination of licensing niches which the present complex system may have established (either by exemption or uncertainty).

Despite further police powers to close troublesome premises, the proposed liberalisation of licensing hours is controversial; some uncertainty surrounds the likely impact on crime levels and their distribution through the night.



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# I Licensing in England and Wales

## A. Liquor licensing

The earliest liquor licensing statute dates back to 1495. Administered by local justices, the measure aimed to guarantee good behaviour in alehouses and to control their numbers. *Paterson's Licensing Acts* goes on to chart the history of licensing to the present system, embodied by the *Licensing Act 1964*, as amended.

In very general terms, the present arrangements as they relate to licensed premises cover entry controls and operating controls. The system is administered by licensing committees of magistrates who seek to ensure that the premises and persons responsible are suitable for selling alcohol. Operating controls cover opening hours and sales to children.

With provision for extended hours and occasional events, there are over 40 different kinds of licence or permission, but the two general categories of justices' licence are the on-licence and the off-licence. These are subdivided into categories according to the type of intoxicating liquor that may be sold, and by any conditions. For example, a *full* on-licence allows the sale for consumption on (or off) the premises of intoxicating liquor of all descriptions (other types exclude spirits).<sup>1</sup> In addition to the wide discretion justices have in setting conditions,<sup>2</sup> certain statutory conditions are implied according to the type of premises to which the on-licence applies. Examples include restaurant and residential on-licences.

In the case of off-licences, the justices may not attach any conditions though undertakings and assurances may be sought. Any subsequent breach might prejudice the subsequent renewal of the licence, or provide grounds for its revocation, however.

A justices' licence authorises the "fit and proper"<sup>3</sup> holder, or holders, to sell intoxicating liquor at the named premises. In addition to any attached conditions or undertakings, the following permitted hours are stipulated by the 1964 Act:

### On-licences:

Monday to Saturday: 11.00 am (or, at the justices' discretion, any time after 10.00 am) to 11.00 pm

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<sup>1</sup> Section 1(3), *Licensing Act 1964*

<sup>2</sup> Jeremy Phillips (*Licensing Law Guide*) lists 124 possible conditions, though only a very limited selection would normally apply to an individual case.

<sup>3</sup> Section 3(1), *Licensing Act 1964*

Good Friday and Sunday: 12 noon to 10.30 pm

Christmas Day: 12 noon to 3.00 pm; 7.00 pm to 10.30 pm

### Off-licences

Monday to Saturday: 8.00 am to 11.00 pm

Sunday: 10.00 am to 10.30 pm

Good Friday: 8.00 am to 10.30 pm

Christmas Day: 12 noon to 3.00 pm; 7.00 pm to 10.30 pm<sup>4</sup>

As a result of the *Regulatory Reform (Special Occasions Licensing) Order* SI 2002/3205, permitted hours for on-licences have been extended to include the period between the end of permitted hours on New Year's Eve and the beginning of permitted hours the following day. The same extension applies to any associated public entertainments, such as music and dancing; these are licensed by the relevant local authority.

The *Good Practice Guide*, produced by the Justices' Clerks' Society, acknowledges the potential for overlap between the responsibilities of magistrates and the relevant local authority:

To avoid confusion and duplication we RECOMMEND that the following matters are more appropriately left to the local authority to determine:

- Planning, Building Regulations and Consents (including parking, delivery of stock, and provision for the disabled).
- Environmental Issues (including hygiene, sanitation, and nuisance arising from unacceptable noise levels), and matters relating to Health and Safety.<sup>5</sup>

## **B. Entertainments licensing**

The legislation governing public entertainments licensing in most of England and Wales is the *Local Government (Miscellaneous Provisions) Act 1982*. Schedule 1 covers licensing of public entertainments, specifically exempting from licensing "any music" (i) in a place of public religious worship; or (ii) performed as an incident of a religious

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<sup>4</sup> Section 60, *Licensing Act 1964*

<sup>5</sup> Paragraph 3.13



meeting or service.<sup>6</sup> Even where a public entertainments licence is required, paragraph 7 of the schedule provides exemptions from fees:

(1) Subject to sub-paragraphs (2) and (3) below, an applicant for the grant, renewal or transfer of an entertainments licence shall pay a reasonable fee determined by the appropriate authority.

(2) No fee shall be payable if the application is for a licence for the entertainment—

(a) at a church hall, chapel hall or other similar building occupied in connection with a place of public religious worship; or

(b) at a village hall, parish or community hall or other similar building.

Schedule 12 of the *London Government Act 1963* relates to public entertainments licensing in the capital. It begins:

(1) Subject to sub-paragraph (6) of this paragraph no premises in a London borough or the City of London, whether or not licensed for the sale of intoxicating liquor, shall be used for any of the following purposes, that is to say, public dancing or music and any other public entertainment of the like kind, except under and in accordance with the terms of a licence granted under this paragraph by the council of that borough or the Common Council, as the case may be, and that council or the Common Council is in this Schedule referred to as “the Council”.

There are no exemptions for places of worship in London.

One exemption, applying throughout England and Wales, is provided by section 182 of the 1964 Act:

No statutory regulations for music and dancing shall apply to licensed premises so as to require any licence for the provision in the premises ... of public entertainment by way of music and singing only which is provided solely by the reproduction of recorded sound, or by not more than two performers, or sometimes in one of those ways and sometimes in the other.

This is colloquially the “two in a bar” rule, meaning that (liquor) licensed premises do not need a public entertainments licence for live performances by up to two musicians. When more than two musicians participate, either together or sequentially, an entertainments licence is required.<sup>7</sup>

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<sup>6</sup> Paragraph 1(3)(a)

<sup>7</sup> *Toye v Suffolk Borough Council* [2002] EWHC 292 (Admin), cited in *Paterson’s Licensing Acts 2003* p 4

In his 1998 foreword to Jeremy Phillips' *Licensing Law Guide*, John Saunders comments:

Most of the higher courts which have had to grapple with the details of the licensing laws have found them to be badly drafted and incomprehensibly worded, whose true intent is buried in the mists of time. The clamour for reform seems to increase in volume every day, but when will the government find the will and the time to tear up the Licensing Act 1964?

## II Time for Reform

The Government's white paper, *Time for Reform: Proposals for the Modernisation of our Licensing Laws* was published in April 2000. It acknowledges, among other things, that the present liquor licensing system "makes it hard for local residents to influence the process." Below is a summary of proposals, taken from the white paper:

- ✓ A single integrated scheme for licensing premises which sell alcohol, provide public entertainment or provide refreshment at night
- ✓ A new system of personal licences which allow holders to sell or serve alcohol for consumption on or off any premises possessing a premises licence. (Places providing public entertainment or refreshment at night which does not involve alcohol, would require a premises licence only)
- ✓ The legal age for drinking alcohol on licensed premises and for buying it there, whether as off-sales or on-sales, both to be 18
- ✓ New measures to back-up restrictions on underage drinking including:
  - a new offence of buying alcohol on behalf of a person under 18
  - a new offence of knowingly permitting a sale to a person under 18 years
  - test purchasing to be placed on a statutory footing
  - a new duty on people selling alcohol to satisfy themselves about customers' ages

(where any of these measures have not been secured through a Private Member's Bill presently before Parliament)<sup>8</sup>

- ✓ Personal licences to be issued for ten years to those aged 18 or over without a relevant criminal record following a test of knowledge of licensing law and social responsibilities with provision for endorsement or withdrawal of licences within that period: abolition of vague "fit and proper person" test in respect of licences to sell alcohol

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<sup>8</sup> a reference to what is now the *Licensing (Young Person's) Act 2000*

- ✓ Premises licences to incorporate operating conditions (e.g. hours, noise, fire exits, capacity) limited to crime and disorder/public safety/nuisance factors, and set locally on basis of the balance of operator's requirements /resident views/police and fire authority assessments
- ✓ To minimise public disorder resulting from fixed closing times, flexible opening hours, with the potential for up to 24 hour opening 7 days a week, subject to consideration of the impact on local residents
- ✓ Tough new powers for police to deal instantly with violent and disorderly behaviour by closing premises that rogue licence holders have allowed to become the focus of such behaviour
- ✓ Children to be allowed access to any part of licensed premises at the personal licence holder's discretion; but licensing authorities to have the discretion to restrict (e.g. by requiring adult supervision) or deny access for children to unsuitable licensed venues
- ✓ Personal and premises licences to be issued by local authorities
- ✓ An avenue of appeal for parties (including the police and local residents) to the Crown Court
- ✓ Licences to be supported by a flexible range of sanctions (including temporary reduction in opening hours) instead of present single all or nothing sanction of loss of licence
- ✓ New requirements in the wake of the Thames Safety Inquiry for licensing the sale of alcohol on boats travelling within England and Wales
- ✓ New arrangements for non-profit making registered clubs supplying alcohol to their members which preserve their special status

## A. Comments on the proposals

Of particular relevance to the representation of local people is the proposal to give the licensing role, currently with magistrates, to local authorities. This was one of two key issues identified in a written answer announcing the Government's conclusions following responses to the white paper:

**Mr. Grogan:** To ask the Secretary of State for the Home Department when he will announce the outcome of consultations on the proposals for reform of the licensing laws set out in the White Paper, "Time for Reform".

**Mr. Mike O'Brien:** We are grateful for all the responses to our proposals. We have concluded that they confirm the case for comprehensive modernisation of the alcohol and entertainment licensing laws in England and Wales. They show that the White Paper proposals represent a sound basis for legislation and strike the right overall balance between the needs of business, the enlargement of consumer choice, and the interests of local residents.

Two issues raised by the White Paper attracted most comment: which body should be responsible for the new integrated licensing arrangements and whether licensing hours should be extended.

As to the former, the responses to the White Paper showed a great divergence of opinion. We have considered with care the views of those who argued that the new licensing authorities should be based on magistrates courts. However, there remains a clear need to bring greater democratic accountability to licensing, and we remain persuaded that local authorities are the right bodies for this purpose. It will of course be important for all licensing decisions to be taken, as the White Paper stressed, in accordance with fair and consistent procedures.

The balance of opinion among those who commented specifically on licensing hours in responding to the White Paper clearly supported our proposals for more flexible arrangements. They will make an important contribution to dealing with the problems of alcohol-related crime and disorder, alongside the provisions in the Criminal Justice and Police Bill.

The responses to the White Paper include a number of reservations or suggestions which are helpful, and which we shall want to pursue as we work up the detail of legislative proposals to bring before Parliament in due course. There is, however, one major point on which we have been persuaded by the consultations that a substantive change to the White Paper proposals is required.

The appeal arrangements described in the White Paper gave rise to considerable anxiety for many interested parties. We now intend to provide in legislation that appeals against licensing decisions should go to local magistrates courts on both law and merits, rather than to the Crown court.

We will continue to consult closely with all the interested parties as work on preparing the necessary legislation proceeds.<sup>9</sup>

As a Home Office press release of May 2001 also noted, the only major change to the white paper's proposals was that appeals against licensing decisions by the local authority would now be heard by local magistrates rather than the Crown Court.<sup>10</sup> This returned some oversight of the licensing system to magistrates while moving to a local authority

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<sup>9</sup> HC Deb 2 May 2001 c 683W

<sup>10</sup> Home Office press notice 117/2001, *Home Office announces it is 'time for reform' of licensing laws*, 2 May 2001

and, it has been suggested, more accountable licensing regime. However, there remain concerns among some quarters of the licensing industry that councils might be more open to influence by unrepresentative local resident groups. In addition, Peter Coulson in the *Morning Advertiser*<sup>11</sup> commented: "Not even the most ardent supporter of local government is under any illusions about the difficulties they face – under-funding, under-staffing, lack of expertise, delays, low morale and suffering a daily barrage of criticism about their performance."<sup>12</sup> Wetherspoon's and the Independent Family Brewers of Britain, along with the Magistrates' Association, reportedly oppose switching responsibility to local authorities. A letter-writing campaign,<sup>13</sup> organised by J D Wetherspoon and Shepherd Neame, aimed to "kill the Bill".<sup>14</sup> More details are available on the Shepherd Neame website.<sup>15</sup> However, the Government's proposals received a wide measure of support from bodies such as the BLRA and ALMR,<sup>16</sup> Bass, Scottish and Newcastle, not to mention the Local Government Association.<sup>17</sup>

The white paper acknowledged complexities and inconsistencies in the current law, which provides for over 40 different kinds of licence or permission. A single integrated licensing scheme, administered by local authorities, was identified as one way of addressing this.

Other problems identified are those related to public order through standard closing hours leading to large numbers of drinkers on the street, late at night and at the same time. This led to one of the more contentious<sup>18</sup> of the white paper's proposals: the introduction of flexible opening hours, "with the potential for up to 24 hour opening 7 days a week, subject to consideration of the impact on local residents." The then Home Office Minister Mike O'Brien said: "Flexible licensing hours will help tackle the problem of alcohol-related disorder by phasing closing times and hopefully, in the longer term, encouraging a change in our drinking culture."<sup>19</sup>

Articles in *Alcohol Alert*, published by the Institute of Alcohol Studies, record concerns related to these proposals. One issue quotes a letter from Frank Dobson MP, written in the context of Soho (which has a particularly high density of licensed premises): "It seems clear to me that late night opening of any but the most respectable and quiet premises encourages drug pushing and drug taking if only [because] it leads to the presence of young people on the streets."<sup>20</sup>

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<sup>11</sup> a weekly newspaper of the licensed trade

<sup>12</sup> "Martin's justified in fears over licensing", *Morning Advertiser*, 10 May 2001 p 16

<sup>13</sup> "Industry turns up heat on Jowell over reform", *Morning Advertiser*, 4 July 2002

<sup>14</sup> "Kill the Bill", *Morning Advertiser*, 9 May 2002 p 1

<sup>15</sup> <http://www.shepherd-neame.co.uk/company/reform/index.html>

<sup>16</sup> Brewers and Licensed Retailers Association and Association of Licensed Multiple Retailers

<sup>17</sup> "Martin and Co cheer 'setback'", *Morning Advertiser*, 28 June 2001 p 1

<sup>18</sup> "IAS's response to government licensing proposals", *Alcohol Alert*, issue 3, 2000 pp 2-9

<sup>19</sup> Home Office press notice 117/2001, *Home Office announces it is 'time for reform' of licensing laws*, 2 May 2001

<sup>20</sup> "Open All Hours – City Centre Communities Matter", *Alcohol Alert*, issue 1 2001 p 2

Some 1,200 responses<sup>21</sup> were elicited by the white paper, and these have been deposited in the House of Commons Library.<sup>22</sup> A general licensing reform bill was expected in the 2001/2002 parliamentary session,<sup>23</sup> though it did not feature in the subsequent Queen's Speech. At this stage the by then former Minister (Mike O'Brien) was "saddened and surprised" that the Government was starting its new term "by breaking a promise to every pub-goer in the land."<sup>24</sup> It has been suggested that reasons included a crowded legislative agenda and the possibility that the Department for Culture, Media and Sport, which took control of licensing following the 2001 General Election,<sup>25</sup> wished to focus on communications legislation while giving further consideration to a licensing bill.<sup>26</sup>

Despite the delay, the new Minister (Dr Kim Howells) stated that the Government remained "fully committed to bringing forward legislation to reform the alcohol and public entertainment licensing laws as soon as parliamentary time permits."<sup>27</sup>

Dr Howells confirmed this in a written answer on 26 March 2002, while repeating the Government's belief in the importance of relaxed permitted hours:

**Mr. Wray:** To ask the Secretary of State for Culture, Media and Sport (1) what measures she has taken to allow pubs to open at later hours;

(2) what assessment she has made of the impact of pub opening hours on the binge drinking culture;

(3) what statutory restrictions there are on pubs opening at late hours; and if she will introduce legislation to allow pubs to open at any time.

**Dr. Howells:** The White Paper "Time for Reform: Proposals for the Modernisation of Our Licensing Laws (Cm 4696)", published on 10 April 2000, set out our views on the problem of binge drinking and our plans for reforming the alcohol and public entertainment licensing laws in England and Wales, including the hours during which alcohol may be sold or supplied to the public at public houses and other premises. The existing law establishes permitted licensing hours outside of which licensed premises may not sell or serve alcohol without the special permission of licensing justices; and their consent may only be granted in particular circumstances.

The existing fixed closing times are artificially early. They actively contribute to binge drinking at the end of normal opening time, and result in significant numbers of intoxicated people on our streets simultaneously. This in turn leads to

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<sup>21</sup> HC Deb 20 November 2000 c 19-20

<sup>22</sup> Home Office, deposited paper 00/2000, 29 November 2000

<sup>23</sup> "Reform – nothing to lose and plenty to gain says O'Brien", *Morning Advertiser*, 10 May 2001 p 3

<sup>24</sup> "Breaking its promise to every pub-goer in the land", *Morning Advertiser*, 21 June 2001 p 3

<sup>25</sup> [http://www.culture.gov.uk/new\\_responsibilities/liquor\\_index.html](http://www.culture.gov.uk/new_responsibilities/liquor_index.html)

<sup>26</sup> "All to play for at House of Fun", *Morning Advertiser*, 14 June 2001

<sup>27</sup> HC Deb 2 July 2001 c 78W

peaks of disorder around closing times. To counter and minimise public disorder resulting from fixed closing times, we intend to introduce flexible opening hours as a condition of the licences of each venue, with the potential for some to operate up to 24 hour opening on each day of the week, subject to consideration of the impact on local residents. These changes require the amendment of primary legislation and we intend to introduce a Bill to that end as soon as Parliamentary time permits.<sup>28</sup>

In March 2002, the Justices' Clerks' Society published its response to the draft instructions to Parliamentary Counsel on what was then called the *Alcohol and Entertainment Licensing Bill*, maintaining its opposition to the principle of the move of licensing to local authorities. At the drafting stage, information on the contents of the Bill were circulated among certain licensing practitioners and the trade. Some discussion took place at the 5<sup>th</sup> *Annual Liquor Licensing Conference*, organised by Central Law Training Ltd and held in London on 20 May 2002.

### III Licensing Bill, HL Bill 1

The *Licensing Bill* [HL], HL Bill 1 2002-03 was introduced in the House of Lords on 14 November 2002, along with accompanying explanatory notes.

Part 1 of the Bill defines licensable activities: the retail sale of alcohol; supply of alcohol by clubs; provision of regulated entertainment; the provision of late night refreshment (such as London's night cafes). Local authorities are designated the licensing authorities, and assigned duties, in Part 2 of the Bill. The premises licences in Part 3 are authorisations to use specified premises for one or more licensable activities. A system of club premises certificates is established in Part 4 for organisations such as the British Legion, working men's or cricket or rugby clubs – all of which operate from private premises. Part 5 replaces the present system of occasional permissions and occasional licences with temporary event notices; the degree to which these will be available will depend on whether the applicant holds a personal licence for the supply of alcohol (Part 6). Part 7 defines a range of criminal offences, notably in connection with restricting minors' access to alcohol. In Part 8, the courts and the police are given powers to impose temporary closure orders on any premises covered either by a premises licence or a temporary event notice, either on the grounds of public safety or noise nuisance.

On publication of the Bill, the DCMS issued a press release accompanied by a press pack. The former reported the Secretary of State (Tessa Jowell) as stating that the *Licensing Bill* would lead to a more civilised and responsible culture in the country's pubs, bars and restaurants. It would be a key plank of the Government's drive to cut down on crime and anti-social behaviour.

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<sup>28</sup> HC Deb 26 March 2002 c 910W

Hazel Blears, Sponsor Minister for the Government's joint consultation on a National Alcohol Harm Reduction Strategy said:

I believe that the Licensing Bill will complement the government's drive to reduce the harm caused by alcohol misuse, the goal of our National Alcohol Harm Reduction Strategy.

We believe that fixed closing times can encourage binge-drinking as people rush to beat "last orders". There is also evidence that fixed closing times can drive up crime and disorder in town centres, as large numbers of people leave pubs at the same time. The Government believes that a relaxation of permitted hours will help us to combat both binge drinking and crime.<sup>29</sup>

A briefing note forming part of the Government's press pack outlined the main elements of the Bill:

- A single integrated scheme for licensing premises which sell alcohol, provide public entertainment or provide refreshment late at night, thereby sweeping away considerable red tape at a stroke
- Six existing licensing regimes (alcohol, public entertainment, cinemas, theatres, late night refreshment house and night café) are therefore brought together
- A new system of personal licences which allow holders to sell or serve alcohol for consumption on or off any premises possessing a premises licence. (Places providing public entertainment or refreshment at night which does not involve alcohol, would require a premises licence only)
- The legal age for drinking alcohol on licensed premises and for buying it there, whether as off-sales or on-sales, both to remain at 18 (an exception will allow 16 to 17 year olds supervised by an adult to consume alcohol of less than spirits strength with a table meal on licensed premises)
- Personal licences to be issued for ten years to those aged 18 over without a relevant criminal record following a test of knowledge of licensing law and social responsibilities, with provision for endorsement or withdrawal of licences within that period: abolition of vague "fit and proper person" test in respect of licences to sell alcohol
- Premises licence to incorporate operating conditions (e.g. hours, noise, fire exits, capacity) limited to crime and disorder/public safety/nuisance factors, and set

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<sup>29</sup> DCMS Press Release 200/02, *Licensing Bill launched*, 15 November 2002



locally on basis of the balance of operator's requirements/resident views/police and fire authority assessments

- To minimise public disorder resulting from fixed closing times, flexible opening hours, with the potential for up to 24 hour opening 7 days a week, subject to consideration of the impact on local residents (and therefore existing permitted hours to be abolished)
- Children to be allowed access to any part of licensed premises at the personal licence holder's discretion; but licensing authorities to have the discretion to restrict (e.g. by requiring adult supervision) or deny access for children to unsuitable licensed venues
- Personal and premises licences to be issued by local authorities
- An avenue of appeal for parties (including the police and local residents) to the magistrates' courts
- Licences to be supported by flexible range of sanctions (including temporary reduction in opening hours) instead of present single all or nothing sanction of loss of licence
- New requirements in the wake of the Thames Safety Inquiry for licensing the sale of alcohol on boats travelling within England and Wales
- New arrangements for non-profit making registered clubs supplying alcohol to their members which preserve their special status
- Power for the Secretary of State to declare special hours up to 24 for all premises on national occasions
- Abolition of a range of ancient and special privileges regarding sales of alcohol held by the Crown, certain theatres, the Vintners of the City of London, the Vice Chancellor of the University of Cambridge
- Repeal of the Welsh Sunday Opening Polls<sup>30</sup>

The latter refers to provisions of the *Licensing Act 1964*, under which a poll can be held every seven years if 500 or more local government electors in a particular county or county borough give notice to the council. Among polls held were ones in Gwynedd and

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<sup>30</sup> [http://www.culture.gov.uk/PDF/licensing\\_bill\\_summary\\_key\\_points.pdf](http://www.culture.gov.uk/PDF/licensing_bill_summary_key_points.pdf)

in Rhondda Cynon Taff in November 1996 where there were turnouts of 37% and 16% respectively.<sup>31</sup> A written answer in November 2001 had addressed the case for change:

**Lord Hooson** asked Her Majesty's Government:

In the light of the decision of the National Assembly for Wales in favour of ending septennial voting on whether public houses should remain open on a Sunday or not, and in view of the fact that the next vote is due to be called in 2003, whether they can give any indication on when the necessary legislation will be introduced into the Westminster Parliament to abolish the necessity for this poll.

**The Minister of State, Department for Culture, Media and Sport (Baroness Blackstone):** The abolition of the Welsh Sunday opening polls requires the repeal of Sections 67 and 68 [66 and 67] of, and Schedule 8 to, the Licensing Act 1964. Polls only need to be held in 2003 if 500 electors in any Welsh district requisition one. It has been the policy of successive governments to abolish these polls and we have indicated our readiness to do so as part of the general reform and modernisation of alcohol licensing law...<sup>32</sup>

Appendix 2 of this paper compares the existing licensing regime with that implied by the *Licensing Bill* as originally published.

On the introduction of the Bill, Tessa Jowell also wrote to MPs setting out its purpose, and identifying problems with existing arrangements. These included the lack of democratic accountability of local licensing justices, notwithstanding their acknowledged achievements at “making the most of a difficult and rigid system”. She also pointed to the confusing area of law concerning alcohol sales to and consumption by children, something well set out in an appendix in *Time for Reform*:

***Current law***

2. The complexity of the existing law is confusing and there can be few parents that properly understand it. We have tried to explain it briefly below:
  - ✓ persons under 18 cannot buy a drink anywhere on licensed premises, whether in the bar or elsewhere
  - ✓ the only exception are persons aged 16 and 17 who can buy beer, cider, porter or perry for consumption with a meal not served in the bar
  - ✓ persons under 18 cannot drink in a bar but those aged 5 or more can elsewhere in licensed premises

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<sup>31</sup> Home Office News Release 346/96, 'Wet' Sundays in Wales, 7 November 1996

<sup>32</sup> HL Deb 12 November 2001 cc 57-8W

- ✓ persons aged 5 or more can drink in a registered club, a public place (unless prohibited by bye-law) or at home
  - ✓ persons under 14 are not allowed in the bar of licensed premises during permitted hours unless a Children's Certificate is in force
  - ✓ it is an offence to give a child under 5 an alcoholic drink anywhere.
3. This all leads to some extraordinary anomalies. A person aged 17 years may enter a bar but may not purchase an alcoholic drink. The 18 year old standing next to him may purchase an alcoholic drink, take it into the pub garden and lawfully give it to an 11 year old.

Ms Jowell also pointed to duplication and inconsistencies in the current system:

Many premises serving alcohol also require permanent public entertainment licences that operate in parallel and for which local authorities are responsible, but create duplication, unnecessary costs and bureaucracy. Existing public entertainment licensing law lays down no procedures for the processing of applications and local authorities have been left to create their own. This has produced inconsistency between one local authority area and another and uncertainty for operators. The existing law prevents any integration of the two systems. Cinemas and theatres are also licensed separately even though the essential considerations are similar and relate primarily to fire and other safety issues. Other inconsistent licensing regimes apply to night cafes and take away outlets open at late hours in different parts of the country even though the relevant concerns about disturbance to local residents and public order apply equally across England and Wales.

While local accountability will inevitably give rise to some differences between practices in different areas, the new *Licensing Bill* will impose constraints on the licensing authorities, reinforced by published guidance from the Secretary of State. A “rough early draft” of the Guidance has been prepared, and published online,<sup>33</sup> to inform debates in Parliament during the various Bill stages. The guidelines were greeted with scepticism by Peter Coulson in the *Morning Advertiser*:

The purpose of these is to clarify Government thinking on the intentions behind the legislation, but also to point local authorities in a certain way when they come to exercise their new powers. To that extent, it is an important part of the legislative process.

However, I think readers who are licensees might be forgiven for thinking that we have moved so far away from the initial idea of a “simplification” of the licensing laws that it takes a 100+ page document to explain the basic concepts.<sup>34</sup>

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<sup>33</sup> [http://www.culture.gov.uk/new\\_responsibilities/guidance\\_section177\\_licensing.pdf](http://www.culture.gov.uk/new_responsibilities/guidance_section177_licensing.pdf)

<sup>34</sup> “Guidelines for Bill may not be the final answer”, *Morning Advertiser*, 20 February 2003

## **A. Lords second reading**

Introducing the Bill during the second reading debate, the Minister of State, Department for Culture, Media and Sport (Baroness Blackstone) described the current system of licensing alcohol, public entertainment and late-night refreshment as “an outdated amalgamation of legislation dating back centuries.” There were now more than 50 relevant statutes. She continued:

Four clear objectives will underpin the new system, ensuring clarity and consistency. They are prevention of crime and disorder; public safety; prevention of public nuisance; and protection of children from harm.

The ability of local residents to better influence the licensing process was another feature:

Our plans to enable local residents to make representations about any applications for new or varied licences will give them a greater say than ever before in licensing decisions. We have gone further still. Local residents and businesses, as well as expert bodies, will have the power to request that the licensing authority review existing licences where problems arise. Such a review could result in the modification of the licence, its suspension, or, ultimately, revocation.

Baroness Blackstone argued that the new system would remove unnecessary red tape, replacing six existing licensing regimes with a single system of premises licence – covering all licensable activities. A full premises licence would not be needed for registered members clubs, though they would still have to promote the four core licensing objectives identified above.

A “critical element” of the Bill’s scheme was the complementary system of ten year personal licences, to be issued “automatically to applicants who are 18 and over, have not been convicted of relevant criminal offences, have not forfeited a licence in the previous five years and possess an accredited licensing qualification.”

Replying for the Opposition, Baroness Buscombe supported the broad thrust of the Bill, but had a number of important concerns. One such key issue was the transfer of responsibility for issuing licences from magistrates to local authorities.

We are not convinced that the case has been made by the Government for that radical change in procedure. We have nothing but praise for the magistrates who give up their time for no reward and their clerks without whom the magistrates' court system could not operate...

...While we are confident that the local authority, controlled by elected councillors, is well placed to take on that responsibility and, in so doing, represent the interests of their respective communities, we shall want to examine carefully whether that will work well and equitably in practice.

In particular, Baroness Buscombe was concerned that guidance to be issued by the Secretary of State might “fetter” local authorities’ “discretion to respond to local concerns”. She questioned the conclusiveness of evidence of reduced anti-social behaviour accompanying liberalised licensing laws, a point other Peers would return to.

On a more positive note, we approve of the new system that makes a distinction between premises licences and personal licences. However, the principle of splitting the licence is severely undermined by the requirement to name the personal licensee on the premises licence and treating a change of licensee as a variation of the premises licence. This could lead to a considerable and possibly difficult paper chase every time there was a change of manager or tenant.

The White Paper stated that, on taking up responsibility for a business, the licensee should normally simply register with the police and local authority. The introduction of the term "Designated Premises Supervisor" and the consequent bureaucratic convolutions has made this process confusing and unnecessary.

Similar points were also made by Lord Hodgson of Astley Abbotts and the Earl of Liverpool; the latter also suggested a central register of licensees (as had originally been proposed in the white paper). Lord Redesdale agreed, making an analogy with the way the DVLA issues driving licences.

Referring to the performance of live music, Baroness Buscombe thought it important to “articulate the interests of those who may be subsumed by the greater good of licensing reform”:

We have long campaigned for the abolition of the two-in-a-bar rule—a rule that was brought into law in 1961 as a liberalising measure to allow two musicians to work in a licensed premise without a licence. In our efforts to remove that restriction to only two musicians operating without a licence, we never imagined that the Government would change it to insist that even one would require a licence.

Further, the Bill in its thoroughness appears to necessitate a licence for such harmless activities as church bell ringing, band rehearsals, musical concerts in churches and even carol singing. The wording of the Bill suggests that payment to musicians may be sufficient to trigger licensing. If that is the case, tens of thousands of private wedding receptions, parties and corporate functions would become illegal unless licensed.

The live music issue was elaborated upon by Lord Pendry and Lord Colwyn, both of whom styled the proposals a “none in a bar” regime. The Lord Bishop of London acknowledged an exemption for entertainment incidental to religious services, but was concerned that parishes and voluntary organisations might be deterred from hosting community events. These views found much support during the debate, and the subject of live music in various settings is discussed in more detail in section IV of this paper.

Baroness Buscombe was also concerned that the Bill would allow unaccompanied children to enter licensed premises (another issue to which the House of Lords would return in later stages). She ended by acknowledging the Erroll Committee's recognition, back in 1972, of the need for liquor licensing reform.

Like his Liberal Democrat colleague Lord McNally, Viscount Falkland welcomed the Bill "in general", but emphasised the dangers of excessive alcohol consumption. Citing a report by the *Open All Hours?* campaign, he drew a distinction between the benefits of the "evening economy" with the policing and transport infrastructure needed to support the "late night" or "24-hour" economy.

The report by the *Open All Hours?* campaign rightly goes on to say that the Government seem to be under the impression that as a result of these measures we shall arrive at a position similar to that of continental Europe; namely, a café society, with people going to cafés and restaurants and behaving sensibly because they will have the freedom to drink for 24 hours of the day. But as it points out, in this country, culturally among the young—rather as it was with football at one time—drinking is characterised by mass volume vertical drinking: people prefer to stand rather than sit at tables. That, again, is conducive to heavy drinking with the object of getting drunk. It is nothing new; it has been going on in Britain for hundreds of years. It is a cultural feature, whether we like it or not. I do not think that the Government, in introducing this bold legislation, will change that culture overnight.

Baroness Gardner of Parkes thought the Bill as drafted "in no way" did anything to satisfy the white paper aims of reducing crime and disorder, encouraging tourism or reducing alcohol misuse:

It is all very well to limit regulation. It is quite another thing to create a free-for-all. In contrast with the comments of the noble Baroness, Lady Harris, experience in the City of Westminster has shown that increasing the drinking hours, as has been done in several cases, has only increased the problem. The peak time for criminal offences is 3 a.m., to which present licensing extends.

Baroness Harris had cited the experience of police officers who found dramatic reductions in violence and disorder in areas where licensing hours had been extended. Baroness Walmsley also referred to evidence that this would help "reduce the violence on our streets that often occurs when the pubs close".

Research has shown that informal controls on drinking, the social disapproval and censorship of certain behaviours, are far more effective than formal law, policy and regulation. What is needed is legislation that encourages social disapproval of extreme drunkenness in public—in other words, peer pressure. That could start with pub and bar staff. With proper training, servers could become educators. Continuing to serve a person who is obviously severely intoxicated should result in stronger penalties for the server and the establishment. Could therefore the guidelines to local authorities include the provision that licensed premises must

train their staff properly before they can be considered for extended licensing hours?

Baroness Thornton congratulated the Government on the introduction of a comprehensive Bill, “and the proposal to provide a coherent and simplified code of licensing.” She welcomed the strengthened provisions aimed at preventing alcohol sales to under-age young people. Like many Peers she commented with approval on the new role for local authorities:

I welcome the proposal to transfer responsibility for licensing to local authorities because I believe that that fits extremely well with a range of responsibilities that boroughs have, from dealing with crime and disorder issues to their responsibilities for dealing with nuisance, public safety, regeneration and the environment.

“Cumulative nuisance” problems ought to be considered by local authorities, allowing them to take into consideration the impact licensed premises, particularly those with extended hours, had on the wider community. Lord Skidelsky agreed with these sentiments, judging that:

The main improvement to the Bill would be to require local authorities to take into account the cumulative impact of existing licences in a defined area when considering applications for a new licence. That would deal with the problem of saturation—the over-concentration of pubs and nightclubs, especially the latter, in a locality—which cannot be dealt with merely by attaching conditions to a new licence application.

Local autonomy underlay a related point made by Lord Skidelsky:

I also welcome the transfer of responsibility for licensing from magistrates' courts to local authorities. I say only this: that although the object of transferring licensing control to local authorities is to increase local accountability, the discretion of LAs is so restricted that I believe that they are likely in practice to become little more than agents for transmitting the Secretary of State's wishes—called “guidance”. Merely having the right to process applications according to a national policy will not increase local accountability.

Baroness Hanham also considered the Bill to be centralising, and questioned what she saw as proposals to diminish the role of councils in objecting to new premises, and in enforcing licensing conditions. Lord Tope had a “nagging doubt” that the Bill involved “a local delivery mechanism for central government control”. He also doubted whether planning legislation could effectively control the “cumulative effect” of licensed premises, as some had suggested:

I support the Bill in the belief, if not yet the expectation, that it is moving responsibility to local government and not to local administration—there is an important difference; that the Government recognise the democratic legitimacy of local government and that that is their reason for the transfer; and, if that is their

reason, that they will allow maximum flexibility to reflect local circumstances and local needs. Finally, I repeat that I hope the Government will be persuaded to recognise and take into account the interests of the wider communities that live around these licensed premises.

Lord Phillips of Sudbury's concerns centred on the Bill's requirement that (local) licensing authorities must have regard to the guidance issued by the Secretary of State.

I believe that all that adds up to a constitutionally obnoxious set of arrangements. It is the most dirigiste framework for legislation on such an important and nationwide set of issues of which I am aware. It leaves the Secretary of State wholly unaccountable in law and only accountable in a political way. We say that that is not good enough and many noble Lords have said the same.

For the Government, Lord McIntosh of Haringey attempted to sum up the debate:

I could sum up the debate with the words, "Yes, but". Everybody who has spoken has said that we must make some fundamental changes to a thoroughly unsatisfactory situation, with legislation going back to the 18th century, and almost certainly a lot further back. However, there are serious reservations on all sides about certain aspects of the Bill—perhaps not reservations about the provisions, but concerns about what might or might not be in the Bill. Is the Bill really deregulatory or has it become too bureaucratic? Is adequate attention being given to the needs of local residents? Is there adequate provision to protect children? What about the transfer of licensing powers from licensing magistrates to local authorities? Is that a centralising move, as some have said, or is it a truly decentralising move? If it is decentralising, is it likely to cause problems of conflict of interest? Is there enough opportunity for local conditions to be applied?

A more fundamental issue, on which there was no consensus as far as I could tell, is the likely effect on drinking habits. By opening things up, is the Bill likely to discourage binge drinking? Some people think the opposite.

Various specialist issues, such as music and licensing for churches and village halls and so on, were also raised.

The next section of this paper looks at some of these, in the context of the Bill introduced in the House of Commons.

## **IV Licensing Bill, Bill 73**

In addition to HL Bill 1, two further Bills were printed in the House of Lords; these incorporated amendments made during committee stage (HL Bill 21) and report stage (HL Bill 40). Appendix 3 to this paper gives references to parliamentary proceedings associated with the Bill during its passage through the House of Lords. A new set of explanatory notes accompanied publication of the Bill brought to the House of Commons



on 12 March 2003. Unless otherwise stated, clause references will refer to this *Licensing Bill* [HL], Bill 73 2002-03.

The Bill retains the same overall structure as the original, with nine parts. Each of these is discussed in general terms in the explanatory notes, which also identify any engagement with the European Convention on Human Rights. The Secretary of State's view that the Bill's provisions are compatible with the ECHR follows an assessment particularly of Article 6 (right to a fair and public hearing), Article 10 (freedom of expression) and Article 1 of Protocol 1 (peaceful enjoyment of possessions).

## A. Licensing authorities

The transfer of liquor licensing responsibilities from Magistrates' committees (not courts) to local authorities is one of the key areas of debate. Back in 1972 the Erroll Committee had taken the view that licensing justices ought to retain their existing responsibilities, in preference to transferring these to local authorities. More recently, the Magistrates' Association took issue with the Government's proposal to effect such a transfer:

It is a matter of regret that it is proposed to remove jurisdiction from the licensing justices at a time when the combination of our new approach and the benefit of a simplified modern system of liquor licensing together could prove to be the best model.

There is no evidence that the local authorities can achieve such an approach and indeed the evidence of public entertainment licences which were transferred to the local authorities in 1983 appears to be to the contrary.<sup>35</sup>

In contrast, the Local Government Association supports the transfer of responsibility for the licensing of alcohol to councils. A briefing for the House of Lords remaining stages cited the following reasons:

The new responsibilities will compliment the work of councils in developing Community Plans and Crime and Disorder strategies, as well as their responsibilities for public safety, nuisance and public entertainment licensing.

Residents will have a stronger voice on the granting of licences, as decisions will be made by elected local representatives who are accountable to their communities.

Relaxation of fixed opening hours will bring benefits in terms of tourism, culture and regeneration strategies.

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<sup>35</sup> The Magistrates' Association Licensing Committee, *Response to the Draft White Paper Tomorrow's Local: Modernising Our Licensing Laws*, January 2000 (also locatable in deposited paper 00/2000)

Modernisation of outdated controls over restaurants, pubs and clubs and off licences will bring England and Wales into line with Scotland and most European countries.<sup>36</sup>

Part 2 (Clauses 3-11) of the Bill identifies the local authorities which are to be the licensing authorities, and defines their duties. These include a requirement to keep a register containing, among other things, a record of each premises licence, club premises certificate and personal licence issued (clause 9). Clause 4 (added during Lords report stage) provides for the establishment of a Central Licensing Authority for personal licences. Clause 5 sets out the licensing objectives local authorities must promote in the exercise of their functions under the Bill:

- (a) the prevention of crime and disorder;
- (b) public safety;
- (c) the prevention of unreasonable diminution of the living and working amenity and environment of interested parties in the vicinity of the premises balancing those matters against the benefits to be derived from the leisure amenity of such premises; and
- (d) the protection of children from harm.

## **B. Open all hours?**

### **1. Alcohol and crime**

The Home Office's Police and Reducing Crime Unit conducted a research study<sup>37</sup> exploring the problems encountered in policing city-centre entertainment districts and in dealing with intoxicated arrestees in police custody.

About three-quarters of the arrestees observed during the study's fieldwork period admitted to custody staff that they had consumed alcohol prior to arrest, while nearly sixty percent were classified as being intoxicated. Of these intoxicated arrestees sixty per cent were arrested for alcohol-specific offences, such as being drunk and disorderly or drink-driving. A fifth were arrested for public order offences and a further 12 per cent for assault. Intoxicated arrestees were more likely to be arrested after midnight and on the street than non-intoxicated arrestees.

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<sup>36</sup> Local Government Association, *Licensing Bill Briefing for the remaining stages, House of Lords*, 24 February 2003

[http://www.lga.gov.uk/Documents/Briefing/remaining\\_stage\\_briefing.pdf](http://www.lga.gov.uk/Documents/Briefing/remaining_stage_briefing.pdf)

<sup>37</sup> *Drunks and disorder: Processing intoxicated arrestees in two city centre custody suites*, Police Research Series Paper 150, Home Office

*Alcohol and Crime*,<sup>38</sup> a fact sheet produced by Alcohol Concern provides some indication of the scale of the problem. Surveys suggest that offenders have been found to be intoxicated in 30% of sexual offences, 33% of burglaries, 50% of street crime and 85% of crime in pubs and clubs. Studies of incidents of disorderly behaviour in urban areas show that almost half the incidents occur shortly after pub closing time, particularly on Friday and Saturday evenings.

Against this backdrop, the *Open All Hours?* campaign, supported by the Civic Trust and the Institute of Alcohol Studies, took the view that “it would have been preferable to retain the concept of ‘normal permitted hours’ but with some extension of terminal hour until, for example midnight, thereafter putting the burden of proof on the applicant that their proposal will meet the defined licensing objectives.” The Institute of Alcohol Studies, together with Alcohol Concern have given evidence on the *Licensing Bill* to the ODPM Select Committee’s ongoing inquiry into the evening economy and urban renaissance.<sup>39</sup>

It is interesting to note that the Erroll Committee, in 1972, recommended that on-licences should have permitted hours between 10 am and 12 midnight – bearing in mind the retention of extensions for night clubs and special occasions.

A DCMS press release<sup>40</sup> accompanying publication of the *Licensing Bill* repeated an assertion in the presaging white paper that flexible opening hours would help reduce public order problems – arising from staggered leaving times. In a letter to the *Daily Telegraph* (18 November 2002) John McNamara, chief executive of the British Institute of Innkeeping, wrote: “The strongest advocates of the ‘staggered closure’ policy are the police who, with local authorities, may better manage public spaces and ensure transport to make sure that the steady stream of revellers quickly exits town centres. The current rules encourage last-minute “binge drinking”, then throw thousands on to the street simultaneously – disorder is almost guaranteed.”

## 2. An end to permitted hours

Referring to the permitted hours of the 1964 Act, the Bill’s explanatory notes state:

12. In contrast to the existing law, the Bill does not prescribe the days or the opening hours when alcohol may be sold by retail for consumption on or off premises. Nor does it specify when other licensable activities may be carried on. Instead, the applicant for a premises licence or a club premises certificate will be able to choose the days and the hours during which they wish to be authorised to

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<sup>38</sup> <http://www.alcoholconcern.org.uk/Information/Factsheets/New%20Factsheet%2010.htm>

<sup>39</sup> Office of the Deputy Prime Minister: Housing, Planning, Local Government and the Regions Committee, *The Evening Economy and the Urban Renaissance*, HC 396-iii 2002/03 (uncorrected evidence)

<sup>40</sup> DCMS press notice 200/02, *Licensing Bill launched*, 15 November 2002

carry on licensable activities at the premises for which a licence is sought. The licence will be granted on those terms unless, following the making of representations to the licensing authority, the authority considers it necessary to reject the application or vary those terms for the purpose of promoting the licensing objectives.

Premises licences and club premises certificates are covered, respectively, in Part 3 and Part 4 of the Bill. An application for a premises licence (clause 18) would have to be accompanied by an operating schedule which would, among other things, identify the licensable activities (clause 1) and the intended hours of opening. Similarly for clubs (clause 71).

### **C. Churches and charities**

Clause 1 of the *Licensing Bill* 2002-03 defines licensable activities as including “the provision of regulated entertainment”, and regulated entertainment is defined in Schedule 1. Paragraph 9 of this provides an exemption for religious meetings and services:

The provision of any entertainment or entertainment facilities—  
(a) for the purposes of, or for purposes incidental to, a religious meeting or service, or  
(b) at a place of public religious worship,  
is not to be regarded as the provision of regulated entertainment for the purposes of this Act.

The second exemption (b) was added during Lords report stage, widening the scope of entertainments churches could provide without a premises licence. Even without this modification the clear implication was still that services, nativity plays, hosting *Songs of Praise* etc. would be exempt from local authority entertainments licensing. Of course, churches are subject to other regulations, such as the need to comply with the *Health and Safety at Work etc. Act 1974*, enforced in this case by the local authority environmental health department.

Speaking during the second reading debate, the Lord Bishop of London had referred (in the second paragraph below) to the exemption granted in the *Local Government (Miscellaneous Provisions) Act 1982*:

The other interest which I seek to declare is as the chairman of the Church Heritage Forum, which brings together a number of Church and statutory bodies. At present, concerts and similar events within a place of worship are exempt from the need for licensing, always with the exception of London, which has enjoyed another regime under which a licence is required but no fee is payable if the entertainment concerned is of an educational character or given for a charitable purpose.

One of the stated intentions of the Bill is deregulation. Therefore, I ask what the justification is for introducing a new layer of regulation and expense for

community activities. Where is the evidence of abuse that justifies removing an exemption which Parliament provided in 1982? I have seen nothing in the explanatory papers which even begins to address the question of places of worship or the implications for them.

I appreciate that the Bill provides that entertainment incidental to a religious service will be exempt from licensing. I am glad that we are not being asked to consider such a Soviet-style proposal. But the kind of concerts and plays which would seem to be caught by this legislation would, as far as I can see, range from the Brownies' end-of-term concert to the Three Choirs Festival.<sup>41</sup>

Similar concerns were raised by other Peers.

For the Government, Lord McIntosh of Haringey said:

I turn to the point concerning churches, village halls and places whose primary purpose does not come within the purview of any licensing legislation. I can give an assurance straightaway that bell ringing and carol services do not require licences. As the right reverend Prelate the Bishop of London knows, there has been a disparity between the situation in Greater London and areas outside Greater London, in relation to which we have to make a distinction. We must rationalise that position and make the same provision for both London and other areas elsewhere. Our position is that where churches are not used for religious activities but for secular performances, there is no justification for treating them differently from any other charitable body that seeks to raise money.

The issue here is the risk to the public at any public entertainment venue. That risk is neither increased nor diminished by the fact that it is staged by a charity rather than a commercial body, nor is it increased or diminished by the fact that it is conducted in a consecrated building. We shall make it clear in guidance that it would be wholly inappropriate to attach disproportionate conditions to licences affecting churches and other charitable institutions.<sup>42</sup>

On the first day of committee stage, Baroness Blackstone offered further reassurance:

The common intention of Amendments Nos. 5, 23 and 24, is to exclude places of worship from the entertainment aspects of the licensing regime. Amendment No. 5 goes further and also exempts educational institutions...

...The Bill, as currently drafted, exempts all music and other entertainment which is for, or incidental to, a religious meeting or service. In answer to the noble Lord, Lord Redesdale, that would certainly include carol services. However, it does not exempt secular entertainments in churches or other places of worship, as I believe those who have taken part in the debate clearly understand...

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<sup>41</sup> HL Deb 26 November 2002 c 684

<sup>42</sup> HL Deb 26 November c 734

...The noble Lord, Lord Williamson, asked why those provisions were inserted. I have to remind the Committee, again, of a matter that arose at the beginning of the debate. Churches in London are already subject to a premises licence regime. Concerts take place in London churches...

...I believe that it was thought right that one regime should apply to the whole country and that this was an anomaly. Of course, Members can argue that the Government could have gone in the other direction and taken London out, rather than that there should be one rule for churches in London and another rule for churches in rural areas. I entirely accept that it could go in that direction rather than being extended to cities, towns and villages elsewhere in the country.

We are naturally concerned that the Bill should treat all faiths equally—indeed, it must, as my noble friend Lord Ahmed said. A definition which properly includes all potential places of religious worship and does not drive a coach and horses through the Bill is no easy matter. Members need to think about so-called "new-age" religions and "raves" which some people believe masquerade as worship—and, indeed, they sometimes do. Therefore, we should be extremely careful before settling on a form of words which does not protect bona fide places of worship.

Therefore, we intend to consider our position again in respect of places of worship and to do so carefully...

...Having made a very important concession—which I hope will be welcomed—that we will go back and look carefully at the issue of an exemption for churches which is watertight and not subject to all kinds of difficulties, including cases being taken to court, I hope that the noble Baroness will feel able to withdraw her amendment.<sup>43</sup>

The latter is a reference to an amendment tabled by Baroness Buscombe, which she went on to withdraw.

Church groups had been particularly vociferous in their opposition to the proposed regime and the breadth of events it might cover. In a letter to the *Times* on 30 November 2002, the Minister, Kim Howells, sought to allay fears as to the cost of licences:

Fees for licences will be set centrally by the Secretary of State under secondary legislation, and it would be open to her, where appropriate, to set fees at a reduced level for charities and religious groups or indeed to decide that they should be waived.<sup>44</sup>

There had also been press speculation about some factors behind the drafting of the Bill, thus the *Times* of 18 December 2002:

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<sup>43</sup> HL Deb 12 December 2002 cc 365-7

<sup>44</sup> "Intended purpose of the licensing Bill", *Times*, 30 November 2002

Ministers have admitted privately that several parts of the Licensing Bill are ridiculous and need complete redrafting. Officials are being blamed for drafting over-zealous rules into the Bill...

...Kim Howells, the minister responsible for licensing law, is understood to have ordered civil servants to rewrite parts of the Bill. He is said to be particularly annoyed about the proposals to license church groups. A source close to the minister admitted: "Civil servants gave the excuse that with some New Age religions the congregation could go a bit loopy. It was totally spurious and absolute nonsense. They were just trying to come up with an excuse for what is essentially a needless change."<sup>45</sup>

On 3 February 2003, the Secretary of State for Culture, Media and Sport (Tessa Jowell) issued the following written ministerial statement:

Following further consideration and consultation with faith groups, the Government has tabled an amendment to the Licensing Bill that would exempt secular entertainment provided in places of public religious worship and the provision of entertainment facilities in such places from the need to obtain a licence under the Bill when it is enacted. Music for the purposes of or incidental to a religious service or meeting is already exempt.

The exemption reflects the current position outside Greater London. Within Greater London, the provision of secular entertainment at places of public worship has for many years been licensable. The amendment the Government has tabled will add further to the deregulatory measures already contained in the Bill.

The Government also wish to make plain its intention to exempt church halls, chapel halls or other similar buildings occupied in connection with a place of public religious worship, and village halls, parish or community halls or other similar buildings from the fees associated with the provision of entertainment or entertainment facilities under the licensing regime.

Use of such premises to put on entertainment will still require a licence as such provision can and does give rise to issues of nuisance, public safety and crime and disorder. However, the Bill provides for a streamlined and straightforward licensing scheme with minimum bureaucracy. In addition, the guidance to be issued by my Right Honourable Friend the Secretary of State for Culture, Media and Sport, under the Bill will make it clear that conditions attached to any licences for such premises must be proportionate to the risks involved, which are likely to be minimal in most cases.

Where a premises licence authorises the sale of alcohol in premises of this nature, however, the normal licence fee will be payable. This is entirely in line with existing arrangements. In addition, those wishing to use village, church and

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<sup>45</sup> "Ministers backtrack on church concert fees", *Times*, 18 December 2002

parish halls, and other community buildings will all be able to take advantage of the simple and easy notification procedure that the Bill provides for temporary events.

The precise details of the fee structure will be the subject of consultation with interested parties.

The Government hopes that religious institutions, music societies and other community groups will derive great benefit from the exemptions and that the initiative will further strengthen our drive to increase the diversity of cultural experience available to people and communities throughout England and Wales. Furthermore, the exemptions will bolster the measures already contained in the Bill that are designed to foster live music by opening up even further the opportunities for musicians to perform.<sup>46</sup>

A Church of England press release welcomed the announcement:

The Church of England has warmly welcomed the Government's tabled amendment to the Licensing Bill which ensures that places of worship will be exempt from the requirements for public entertainment licensing. At the same time the Government proposes to exempt Church and Village Halls from a need to pay licensing fees.

The Bishop of London, the Rt Revd & Rt Hon Richard Chartres, spoke in the Second Reading debate in the House of Lords against the Bill's proposals to licence musical and dramatic events held in churches and other places of worship, and moved an amendment in Committee seeking exemption from licensing. The Bishop said today:

'I am glad that the contribution made by the churches and other places of worship to the cultural and community life of this country has been recognised. This Government amendment will remove the danger that a new layer of regulation and expense would fall on the huge number of volunteers involved in community activities in our churches.' ...<sup>47</sup>

For the Opposition, Baroness Buscombe and Lord Luke tabled amendments reflecting the undertakings by government ministers. These included the following to what was then clause 54 of HL Bill 21 (now clause 55 of Bill 73):

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<sup>46</sup> HC Deb 3 February 2003 cc 7-8WS

<sup>47</sup> Church of England press release, *Church welcomes Government's Licensing Bill amendment*, 3 February 2003



**Clause 54**

THE BARONESS BUSCOMBE  
THE LORD LUKE

Page 32, line 19, at end insert—

- "( ) In regulations made under this section, the Secretary of State shall prescribe a nil fee to certain categories of premises which shall include—
- (a) church halls,
  - (b) village halls,
  - (c) parish halls,
  - (d) community centres, and
  - (e) similar community buildings."

During the first day of report stage (24 February 2003), the Lord Bishop of London commented:

As the Minister reminded us [...] the Government made the welcome statement that they proposed to exempt buildings such as church and village halls and similar premises from licensing fees, even though those premises would need to undertake the necessary procedures. That is encouraging news for those who look after places of worship and community buildings. I note that no specific government amendment on that matter has been tabled although a measure has been tabled which would have a similar effect. I should be interested to know what the Government propose in that regard. Will the Minister be kind enough to give an undertaking on how it is intended to bring that welcome proposal into effect?

Baroness Blackstone replied:

I say to the right reverend Prelate that it is indeed our intention that church halls, chapel halls and other similar buildings—village halls, parish halls and community halls—will be exempt from the fees associated with the provision of entertainment and entertainment facilities. A relevant amendment has not been tabled because we do not need one: the Secretary of State is already able to set fees at any level for any class of premises. We shall take this issue into account when setting the fees.

Clause 55 on fees accordingly is not materially different from clause 54 of the original Bill.

One significant government defeat on that day related to a further exemption from licensing. As a result of an amendment moved by Baroness Buscombe, paragraph 14 was added to Schedule 1:

The provision of any entertainment or entertainment facilities in the premises of an educational establishment for the purposes directly connected to the activities

of the establishment is not to be regarded as the provision of regulated entertainment for the purposes of this Act.

#### **D. Live music**

Another example of a entertainments licensing issue is the abolition, by the Bill, of the “two in a bar” rule: currently pubs and other licensed premises do not need a public entertainments licence for live performances by up to two musicians.<sup>48</sup>

Paragraph 83 of the white paper signalled the Government’s intention to change these arrangements:

...the current exemption from public entertainment licensing which allows two musicians to perform in on-licensed premises should end (because discos or one or two musicians with powerful amplifiers can make more noise and so generate more nuisance than three without), and be subsumed into the broad permission granted under the basic licence.

This point was included in a written answer by Dr Kim Howells (Minister for Tourism, Film and Broadcasting):

**Miss McIntosh:** To ask the Secretary of State for Culture, Media and Sport (1) what recent representations she has received concerning the licensing of premises for public entertainment; and if she will make a statement;

(2) what plans she has to change the law on the licensing of premises for public entertainment, with regard to the number of performers allowed to perform at unlicensed premises.

**Dr. Howells:** I have received a number of representations recently from hon. Members on behalf of their constituents and from performers of live music calling for the abolition of the exemption which provides for up to two musicians to perform live in public houses without a public entertainment licence. These include a number of similar letters sent to me as part of a campaign. I have also received representations arguing that all live music should be exempt from licensing, that some licence fees are excessive, that some conditions attached by local authorities are disproportionate and that the current licensing regime deters spontaneous singing in public houses.

Our plans for the modernisation of the licensing regimes were set out clearly in the White Paper "Time for Reform" (Cm. 4696) published on 10 April 2000. We proposed that the current exemption from public entertainment licensing that allows two musicians to perform live in premises licensed for the sale of alcohol should end. This is because one or two live musicians using powerful microphones and amplifiers can make more noise and so generate more nuisance

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<sup>48</sup> Section 182, *Licensing Act 1964*

for local residents than three without. Alcohol and public entertainment licensing will be integrated into a single scheme. This would remove at a stroke a considerable amount of existing red tape and reduce the licensing costs which currently deter many venues from providing live music and dancing. The reforms will be implemented by means of primary legislation to be brought forward as soon as parliamentary time permits.<sup>49</sup>

A number of commentators suggested that the Government's white paper proposals, while aiming to reduce licensing burdens in respect of entertainments, could have the opposite effect. The reason for this is that, by removing the current exemption for two or fewer musicians, *all* entertainment would be covered.<sup>50</sup>

The original Bill would have required inclusion in a single combined liquor/entertainment licence – a premises licence – of conditions for performances by any number of musicians. So a single folksinger would have triggered entertainment licensing conditions. This would not necessarily involve significant extra cost, at least compared to a premises licence covering just liquor sales. John Whittingdale tabled Early Day Motion 331 of 2002-03 (December 2002), signed by 153 Members:

That this House expresses concern that the Licensing Bill proposals to make the performance of live music licensable in pubs and clubs, in places where alcohol is served, in churches, synagogues, mosques and other places of worship, in schools and colleges, in community centres and village and parish halls, and in private homes and gardens where private parties and weddings may be held will have an enormously detrimental effect on musicians and live music performances; fears that the raising of money for charities by musicians will be seriously compromised; considers it will seriously impinge on the folk community including folk music and traditional folk activities such as morris dancing, wassailing, &c; believes that the penalties for breaking the law of a six month jail sentence of a £20,000 fine are far too draconian; considers it grossly unfair and inconsistent that live music will not be licensable in Scotland but will be in England and Wales; regrets that the Government has decided to replace the anomalous two in a bar rule with a none in a bar rule which will catch all live music performances; believes that the requirement for the provision of entertainment facilities to become licensable which will ensnare music shops, music and dance studios and teachers, represents a totally unacceptable regulatory intrusion into mainstream activities; and calls on the Government to amend the relevant parts of bill in order to remove the iniquities faced by musicians and the music industry as a whole.

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<sup>49</sup> HC Deb 23 April 2002 cc 153-4W

<sup>50</sup> Association of British Theatre Technicians, District Surveyors Association and Local Government Licensing Forum, *Model national standard conditions for places of entertainment and associated guidance*, 2002 – cited in Colin Manchester's paper at the 5<sup>th</sup> Annual Liquor Licensing Conference (CLT Conferences, 20 May 2002)

The Musicians' Union has been vocal in its opposition to the Bill both on the grounds of iniquity and cost. For example, noisy juke boxes and broadcasts are exempt, and there are also concerns over "hidden" compliance costs and those associated with separate applications to sell alcohol and stage entertainments.

Following an amendment in the Lords report stage, unamplified music incidental to some other activities has been added to the list of exemptions in part 2 of schedule 1. As a result, one or more people playing unamplified music (e.g. a folk group) in a pub would no longer be considered regulated entertainment.

## **E. Children and confiscation**

### **1. Alcohol consumption among the young**

In 1982 the Department of Health (DoH) carried out the first in a series of surveys of secondary school children, aged 11 – 15, to determine smoking behaviour. In 1988 the department added questions relating to alcohol consumption and illegal drug use.

The following is from the summary of the findings relating to alcohol consumption in the 2001 survey<sup>51</sup>.

#### **Prevalence of drinking alcohol in the last week**

Twenty six percent of pupils had had an alcoholic drink in the previous week. This proportion has fluctuated between 20% and 27% since the question was first introduced in 1988, but with no sustained increase or decrease over time.

In most previous surveys boys had been more likely than girls to have drunk in the last week, and this was also the case in 2001 with 28% of boys and 25% having had a drink in the last week.

As with cigarette smoking, drinking was strongly related to age. Only 6% of 11 year olds had drunk alcohol in the last week compared with 52% of 15 year olds.

#### **Trends in volume and types of drink consumed in the last week**

Although the proportion of pupils who drank in the previous week has fluctuated rather than increased over time, the mean consumption for those who had drunk in the last week had risen constantly from 5.4 units of alcohol in 1990 to a peak of 10.4 units in 2000, but it was 9.8 units in 2001. It would be premature to conclude from this year's data that average consumption is on a downward trend, following a decade of unbroken increases. The median number of units drunk was six in both 2000 and 2001, and there was no change in the proportion who consumed seven or more units in the previous week. The data suggest a halt to the upward trend rather than declining average consumption.

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<sup>51</sup> Drug use, smoking and drinking among young people in England in 2001, Summary of key findings, National Statistics.

Historically, boys who drank consumed more units of alcohol in the last week than girls, although between 2000 and 2001 the difference in the amount of alcohol drunk decreased. In 2001 boys who drank consumed an average of 10.6 units compared with 8.9 units for girls. In 2000 the equivalent figures were 11.7 units for boys and 9.1 units for girls.

The types of alcohol drunk have also changed over time – In 2001, beer, lager and cider were still the most common drink (drunk by 70% of drinkers in the last week), but prevalence of alcopops had increased in recent years to reach 68% of drinkers in 2001. The proportion of drinkers who had drunk spirits in the last week had increased from 35% in 1990 to 57% in 2001, whereas prevalence of drinking shandy or fortified wine in the last week have decreased in recent years.

The European School Survey Project on Alcohol and Drugs is a coordinated set of school surveys. The most recent survey was conducted in 1999 among approximately 95,000 10<sup>th</sup> grade students in the 30 participating countries. The survey in each country is representative of the national 10<sup>th</sup> grade student population.<sup>52</sup>

- Of the students questioned in the United Kingdom 91% had consumed an alcoholic beverage in the past year.
- Only Greece, the Czech Republic (both 94%) and Denmark (96%) had a higher figure.
- By contrast less than two-thirds of American students had had an alcoholic drink in the previous year.
- More than three quarters of the UK students had consumed an alcoholic drink in the previous thirty days. Figures were again slightly higher in the Czech Republic, Greece and Denmark.
- A half of those surveyed in the UK admitted to being drunk at least once in the past thirty days, a similar level to Finnish students. The only country with a higher level was Denmark.
- The survey suggests that four in ten students in the UK had been drunk by the age of thirteen. The average across the thirty countries is twenty per cent.

## **2. Young people in licensed premises**

Part 7 of the Bill contains provision for a number of criminal offences under the Bill, clauses 143-153 focusing on the protection of children. Clause 143 provides that in order to enter a public house, nightclub or similar establishment whose primary purpose is the consumption of alcohol, all children aged 14 or under must be accompanied by an adult over the age of 18. This clause was inserted into the Bill as a result of an amendment moved by Baroness Buscombe on the third day of report stage (4 March 2003):

As the Bill stands, unaccompanied children of any age will, in principle, have totally unrestricted access to bars, clubs and pubs at any time of day or night. I

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<sup>52</sup> ESPDA (Published February 2001)

have yet to meet a publican who thinks that that is a good idea or who wants to be responsible for supervising youngsters who may get into trouble in what is sometimes a very adult atmosphere. Licensees have told us that they feel compelled to make their premises as unrestricted as possible in order to remain competitive under the new regulations, irrespective of whether they think that a good idea in principle. That serves only to encourage an environment that puts children in danger. Many children can look older than they are and, with fake identity cards available from the Internet, it is easy for them to fool bartenders and bouncers.<sup>53</sup>

Baroness Blackstone undertook to consider the amendment, and others, but noted in relation to the Bill as it stood:

The Bill simplifies the position by giving children the freedom to enter licensed premises but only at the discretion of the licensee, as several noble Lords pointed out. The licensee does not have to say why he does not want children in his pub or nightclub; he must say how he will protect children from harm, if he intends to admit them.

### **3. Confiscation of alcohol**

Clause 154 relates to the confiscation of alcohol in sealed containers. The issue bears examination in the light of confusion arising from section 29 of the *Criminal Justice and Police Act 2001*. A parliamentary question in November 2001 set the scene:

Vernon Coaker: To ask the Secretary of State for the Home Department what discussions he had with the police prior to the amendment of the Confiscation of Alcohol (Young Persons) Act 1997 to the effect that only alcohol in unsealed containers may now be seized; and if he will make a statement.

Mr. Bob Ainsworth [holding answer 2 November 2001]: Section 29 of the Criminal Justice and Police Act 2001 amends section 1 of the Confiscation of Alcohol (Young Persons) Act 1997 and increases the power of police in respect of under-age drinkers because it now allows them to confiscate alcohol, and alcohol containers which have been opened, from under-age drinkers in public places.

The 1997 Act was deliberately amended by the 2001 Act to ensure consistency between new police powers to confiscate alcohol (but not sealed alcohol containers) from any person in a public place designated for the purpose by the relevant local authority, and the measures contained within the 1997 Confiscation of Alcohol (Young Persons) Act.

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<sup>53</sup> HL Deb 4 March 2003 cc 724-5

Prior to the Act discussions on the provisions were held with representatives of the Association of Chief Police Officers and individual forces who had included confiscation powers within the model byelaw on banning drinking in public places.<sup>54</sup>

The *Criminal Justice and Police Act 2001* refers to alcohol / alcohol container confiscation from anyone in designated<sup>55</sup> public places (section 12) and from young persons<sup>56</sup> anywhere<sup>57</sup> (section 29).

Section 12 begins (with emphasis added):

12 Alcohol consumption in **designated public places**

(1) Subsection (2) applies **if a constable** reasonably believes that a **person** is, or has been, consuming intoxicating liquor in a designated public place or **intends to consume intoxicating liquor in such a place**.

(2) **The constable may require the person concerned—**

(a) not to consume in that place anything which is, or which the constable reasonably believes to be, intoxicating liquor;

(b) **to surrender** anything in his possession which is, or which the constable reasonably believes to be, **intoxicating liquor** or a container for such liquor (other than a sealed container).

The apparently contentious phrase "container for such liquor (other than a sealed container)" is not highlighted since this is preceded by the word "or", rendering it optional. This point was alluded to in debates on section 12 (clause 14 of the original Bill), for example during the Commons Committee Stage:

**Sir Nicholas Lyell:** Broadly this is a sensible clause, but certain aspects need to be clarified...

... At the moment, the subsection says,

``containers for such liquor (other than a sealed container)."

That does not make clear the aim of the clause. Our amendment, which states,

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<sup>54</sup> HC Deb 16 November 2001 cc 965-6W

<sup>55</sup> By local authorities. For further background, see library research paper 01/10, *The Criminal Justice and Police Bill* pp 24-34. The procedure is set out in *The Local Authorities (Alcohol Consumption in Designated Public Places) Regulations* SI 2001/2831.

<sup>56</sup> or adults supplying young persons with alcohol

<sup>57</sup> exclusions include the home and licensed premises

``container which contains such liquor"

is probably otiose, because the police officer is already entitled to take intoxicating liquor anyway.<sup>58</sup>

As it turned out, the "containers phrase" stood, evidently there to send a signal that mere possession of alcohol in sealed containers should not be taken to imply an intention to consume: a person could merely be carrying the alcohol home from the shops.

Section 29 of the 2001 Act relates to young persons:

In section 1(1) of the Confiscation of Alcohol (Young Persons) Act 1997 (c 33) (things to be surrendered to a constable) after "intoxicating liquor", where it appears for the third time, there shall be inserted "or a container for such liquor (other than a sealed container)".

Thus, the new section 1(1) of the *Confiscation of Alcohol (Young Persons) Act 1997* reads (again, emphasis added):

1 Confiscation of intoxicating liquor

(1) **Where a constable reasonably suspects that a person** in a relevant place **is in possession of intoxicating liquor and that** either—

(a) **he is under the age of 18;** or

(b) he intends that any of the liquor should be consumed by a person under the age of 18 in that or any other relevant place; or

(c) a person under the age of 18 who is, or has recently been, with him has recently consumed intoxicating liquor in that or any other relevant place,

**the constable may require him to surrender** anything in his possession which is, or which the constable reasonably believes to be, **intoxicating liquor** [or a container for such liquor (other than a sealed container)] and to state his name and address.

Again, thanks to "or", the sealed container issue should not necessarily arise. It may, however, send signals that a court might conceivably be receptive to. Even so, it is important to point out that, in this section, the initial test is possession, not necessarily consumption,<sup>59</sup> of alcohol.

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<sup>58</sup> SC Deb (F) 15 February 2001

<sup>59</sup> consumption is mentioned in (optional) subsections 1(1)(b) and 1(1)(c)



The need for clarification appears to have been accepted, judging from clause 154 of the Bill.

This clause amends the Criminal Justice and Police Act 2001 and the Confiscation of Alcohol (Young Persons) Act 1997 so that the police have the power to confiscate alcohol in sealed containers from anyone in an area which has been designated by the local authority for the purposes of curbing anti-social behaviour and from people under 18 in any public place. Police powers in relation to confiscation of alcohol currently apply only in relation to opened containers.<sup>60</sup>

A letter from the Minister of State (John Denham) to Paul Burstow MP added further comments on plans to amend the law to allow the police to confiscate sealed alcohol containers “from under age drinkers”:

You will be aware that the existing police powers to confiscate alcohol and alcohol containers from under-age drinkers are provided by the Confiscation of Alcohol (Young Persons) Act 1997, as amended by the section 29 of the Criminal Justice and Police Act 2001. This allows the police to confiscate alcohol from under-age drinkers in public places, including alcohol in opened containers, but not sealed containers.

We have received representations from the police and others to strengthen these powers, to include sealed containers. We have agreed to bring forward the necessary changes in the law and have included a clause [...] in the Licensing Bill, which was introduced to the House of Lords on the 14 November.<sup>61</sup>

In addition, Bob Spink has introduced the *Confiscation of Alcohol (Young Persons) Bill* under the ten minute rule. Introducing his bill, Dr Spink said its aim was “simply to restore to the police the power to remove all alcohol from young people in public places so that they do not consume it, get into trouble and cause mayhem for our communities.”<sup>62</sup> He went on to give examples of the problems caused by underage drinking, before making an observation on current enforcement practices:

The hon. Member for South Ribble (Mr. Borrow) told me that his local police are ignoring new Labour's new law and continuing to take unopened cans and bottles from youngsters in public places.

Thus the Government have contrived to make criminals of the police and to help youngsters into crime and drugs. All of us in this place know that the first use of drugs by young people most often takes place under the influence of alcohol.

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<sup>60</sup> *Licensing Bill [HL] Explanatory Notes*, HL Bill 73-EN

<sup>61</sup> Home Office, Letter from John Denham to Paul Burstow MP, 28 November 2002

<sup>62</sup> HC Deb 15 January 2003 c 714

Such is the reality of a bankrupt, arrogant Government who have simply stopped listening.<sup>63</sup>

While he doubted its appropriateness, he acknowledged that the *Licensing Bill* was an alternative vehicle for bringing about the desired change.

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## Appendix 1: Licensing arrangements elsewhere

In Scotland the licensing system is administered by boards of locally-elected councillors, and the relevant legislation is the *Licensing (Scotland) Act 1976* (as amended). The licensing white paper notes the greater flexibility north of the border:

Flexible hours - no terminal hour since 1976 (then generally 10pm)

Licensing boards set own policy on hours

Some fixed closing times - often 1am for pubs, and 3am for clubs

Some zoning to stagger closing (Glasgow has zoning; Edinburgh does not)

In France, local authorities have considerable powers not only in granting the relevant licence, but in also setting opening times. The mayor and prefect influence opening hours in (respectively) the local municipality and territorial department. Generally, closing times fall between 12am and 2am. Drinking establishments such as bars and cafes are prohibited from certain zones surrounding hospitals, schools, sports arenas or industrial sites. Children between 14 and 16 accompanied by an adult may be served wine and beer. Minors over 16 can be served beer and wine, even if unaccompanied. Restaurants are exempt from liquor licensing regulation.

Similar controls over the consumption of alcohol by minors exist in Germany. Closing times are regulated differently in the federal states. For example, in Bavaria, licensed premises have to remain closed between 1am and 6am, though New Year's Eve carries no such restrictions.

Further details on licensing law in the EU, including Northern Ireland, appear in *Licensing Law Guide* (Jeremy Phillips, 1998). The DCMS have also published notes on the licensing systems in Belgium, Denmark, France, Germany and Holland, available as deposited paper 02/1862, 9 July 2002.

So far as the USA is concerned, liquor licensing is a state responsibility, with variations sometimes occurring at the County level. In Pennsylvania, for example, the permitted hours run from 7am to 2am the following day (Sundays excepted).<sup>64</sup> Some additional overseas examples are provided by the following sites:

<http://www.liquor.qld.gov.au/> (Queensland)

<http://www.lmnc.org/pdfs/LiquorLicensingandRegulation.pdf> (A report compiled by the League of Minnesota Cities)

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<sup>64</sup> [http://www.lcb.state.pa.us/Agency/legal/Liquorcode/ARTICLE\\_IVa.htm#sect401](http://www.lcb.state.pa.us/Agency/legal/Liquorcode/ARTICLE_IVa.htm#sect401)

The following table summarises different licensing arrangements within the EU, taken from the Better Regulation Task Force report, *Licensing Legislation*, July 1998 (<http://www.brtf.gov.uk/taskforce/reports/legislation.pdf>):

COUNTRY	RESTRICTIONS															
<b>Austria</b>	Generally, off-licences open from mid-day to 7pm. On-licences generally close at midnight but with police permission can close later (as late as 5 or 6am), In some areas sale of alcohol prohibited on Sunday															
<b>Belgium</b>	Hours of sale regulated by local authorities - generally no special provisions for sale of alcohol are prescribed.															
<b>Denmark</b>	Local authorities determine hours of sale for off-licences. On-licences are generally permitted to sell alcohol from 5am to midnight but may be extended to almost any time.															
<b>France</b>	No restrictions except for sale of alcohol from service stations (not permitted between the hours of 10pm & 6am).															
<b>Germany</b>	The governments of the German states regulate the closing hours within their own regions and these vary from state to state.															
<b>Republic of Ireland</b>	On-licences 10,30am-11 pm (winter) 10.30am-11.30pm (summer) 12.30pm-2pm & 4pm-11 pm (Sunday) Much longer hours for discotheques, exemptions possible (but not on Sundays).															
<b>Luxembourg</b>	Regulated by local authorities - most premises open from 6am-12am or 1am,															
<b>Norway</b>	Monopoly stores' opening hours: <table style="margin-left: 40px;"> <thead> <tr> <th></th> <th>Summer Hours</th> <th>Regular Hours</th> </tr> </thead> <tbody> <tr> <td>Mon-Wed</td> <td>10am-4pm</td> <td>10am-5pm</td> </tr> <tr> <td>Thurs</td> <td>10am-5pm</td> <td>9am-6pm</td> </tr> <tr> <td>Friday</td> <td>9am-4pm</td> <td>9am-5pm</td> </tr> <tr> <td>Saturday</td> <td>9am-1pm</td> <td>9am-1 pm</td> </tr> </tbody> </table>		Summer Hours	Regular Hours	Mon-Wed	10am-4pm	10am-5pm	Thurs	10am-5pm	9am-6pm	Friday	9am-4pm	9am-5pm	Saturday	9am-1pm	9am-1 pm
	Summer Hours	Regular Hours														
Mon-Wed	10am-4pm	10am-5pm														
Thurs	10am-5pm	9am-6pm														
Friday	9am-4pm	9am-5pm														
Saturday	9am-1pm	9am-1 pm														
<b>Portugal</b>	No licence required, no restriction on licensing hours.															
<b>Scotland</b>	Licensing in Scotland has been regulated by local geographical 'boards' since 1 Oct 1977, by the Licensing (Scotland) Act 1976. These boards consist of local council members and meet quarterly (January, March, June & October) to hear applications, grant renewals etc. All licences renewed annually. Local police commander can make recommendations, observations to the Board but their decision is independent and binding <b>Types of licence:</b> Public House Off Sales Hotel - allowing on and off sales Restricted Hotel – residents & their guests only															

<b>Scotland</b> <i>continued</i>	<p>Restaurant Refreshment Entertainment <b>Fees:</b> All fixed as per a strict menu <b>Permitted hours – general:</b> Off licences                8am-11pm On sales                      11am-11pm Extensions are at the discretion of the Board and are decided on a local ‘needs’ basis. Length of extension is dependent upon the Board as are any conditions, eg. Edinburgh, 4am is not unusual. Widespread use of Children’s Certificates.</p>
<b>Spain</b>	No licence required, no restriction on licensing hours.
<b>Sweden</b>	<p>Class II beer which may be sold through grocery stores during the hours that the stores are open. All other types of alcohol can only be sold from monopoly stores which are open from 9.30am to 6pm Monday to Friday. Closed on Saturday &amp; Sunday</p>
<b>Switzerland</b>	Alcohol can be purchased from grocery stores during normal opening hours (usually 1am-6.30pm) and can also be bought over the counter in restaurants (6 or 7am until midnight or later). Spirit sales are banned before 9am in certain cantons.
<b>England &amp; Wales</b>	<p><b>On-licences</b> Weekdays                    11am-11pm Sun &amp; Good Friday        12 noon-10.30pm Christmas Day                12 noon-3pm &amp; 7pm-12.30am <b>Off-licences</b> Weekdays                    8am-11 pm Sunday                         10am-10.30pm Christmas Day                8am-10.30pm.</p>

Source: Brewers Association of Canada *Alcoholic Beverage Taxation & Control Policies* Ninth Edition.

## Appendix 2: Comparison of existing and proposed licensing regimes

The following reproduces the DCMS comparison of features of the existing licensing regime with the post Bill regime (part of the press pack issued on 15 November 2002):

<b>EXISTING REGIME</b>	<b>POST BILL REGIME</b>
Magistrates have responsibility for alcohol licensing.	Local authorities responsible for all alcohol and entertainment licensing.
Individual licensed to sell alcohol from a particular premises.	Separate premises licence and portable personal licence.
Separate licences for cinema, theatre, sale of alcohol, public entertainment etc.	One premises licence to cover all activities and no additional licence costs for more than one activity.
Applicants for licences have to prove themselves to be "fit and proper".	New applicants for personal licences need to gain an accredited qualification and undergo a Criminal Records Bureau check.
Public entertainment fees set by individual local authorities with resulting inconsistency between different areas.	Centrally set fees for premises and personal licences and no local authority discretion to vary.
"Two in a bar" rule means that where more than two artists perform a public entertainment licence is required, often at considerable cost, even though one performer with an amplifier can make more noise than three or more.	All public entertainment will require a licence but it will cost nothing to add this to the list of activities undertaken eg where a licence for sale of alcohol is being obtained - resulting in a big increase in opportunities for musicians to perform and a corresponding increase in choice and variety for the consumer.
Boats do not require a licence to sell alcohol.	Boats travelling within England and Wales and selling alcohol will require a premises licence - in wake of Thames safety inquiry.
Law regarding children's access to licensed premises is confusing and inconsistent.	Children's access will be the norm, except where there is good reason for them being excluded - balanced by clear objective of protection of children from harm.
The law concerning consumption of alcohol by under 18s in licensed premises is confusing and unrealistic eg it is legal to buy an alcoholic drink and give it to a 6 year old in a pub garden.	16 and 17 year olds will only be able to consume alcohol in pubs when it is bought for them by someone 18 or over and is consumed with a meal in the company of someone 18 or over.
Licences are required for tombolas or raffles where alcohol is offered as a prize.	Tombolas and raffles will be exempted from the requirement for an alcohol licence in most cases.



Anyone wishing to hold a one off event must apply for an occasional permission from the courts.	A new system of temporary permitted activities will allow extensions for premises licences (eg for a World Cup football match or a wedding) and the sale of alcohol by non licence holders within permitted limits after a simple notification.
The University of Cambridge, the Vintners of the City of London and the board of the Green Cloth (a Royal Household committee) all enjoy exemptions on sale of alcohol originating in ancient charters.	All of these archaic exemptions will be repealed.
Secretary of State needs to pass a Regulatory Reform Order to allow relaxation off agreed hours for special occasions such as the Golden jubilee weekend.	The Secretary of State can allow such extensions by the much simpler mechanism of passing an order.
Government Departments, police canteens, army messes etc can obtain a permission to sell alcohol from the relevant Secretary Of State.	All Government facilities will now have to obtain a licence to sell alcohol, except where national security might be compromised.
Anyone can sell alcohol in wholesale quantities to the public without a licence.	The exemption for wholesale will only apply to sales made between businesses or to personal or premises licence holders.
There is broad discretion for licensing authorities on the reasons for making licensing decisions which leads to inconsistencies in aims and purposes.	There will be four specific licensing objectives on which all decisions in relation to licensing applications must be based.
Spectators in hospitality boxes at football matches cannot drink from 15 minutes before kick off until fifteen minutes after the final whistle if they can see the pitch.	This blanket ban will be repealed and individual local authorities will decide on the arrangements for alcohol sales at grounds within their jurisdiction.
Alcohol can only be served within specific limited permitted hours, subject to some extensions being obtained.	Permitted hours will be abolished and each licensed premises will choose its own hours of opening, subject to objections from others.
Police powers to close relate only to permanent on-licensed premises.	Police power to close premises extended to all temporary events such as one off raves.

### Appendix 3: The Licensing Bill in the Lords

The following table charts the progress of the *Licensing Bill* in the House of Lords. Summary information on amendments is given for committee stage only. Clause numbers refer to HL Bill 1. Note that the hypertext “links” are not active here.

<b>LICENSING BILL (HL) 2002/03</b>			<a href="#">top</a>
14.11.02	641 c25	Lords presentation and first reading. (HL Bill 1 of 2002/03).	<a href="#">link</a>
14.11.02	HL Bill 1 2002/03	(Explanatory Notes HL Bill 1-EN published).	<a href="#">link</a>
26.11.02	641 c640- 56,670- 738	Lords second reading debate. Agreed to on question and committed to a Committee of the Whole House.	<a href="#">link</a>
27.11.02	HL 9 2002/03	Delegated Powers and Regulatory Reform Select Committee (HL) first report on the Licensing Bill (HL), Arms Control and Disarmament (Inspections) Bill (HL), High Hedges Bill (HL), Waste and Emissions Trading Bill (HL), European Union (Implications of withdrawal) Bill (HL) and requesting evidence on the proposal for the draft regulatory reform (housing management agreements).	
05.12.02	641 c1233	Agreed to on question (formal).	<a href="#">link</a>
12.12.02	642 c331- 72,382- 442	Lords Committee stage first day. Clauses 1 and 2 agreed to. Schedules 1 and 2 agreed to. Clause 3 under consideration.	<a href="#">link</a>
17.12.02	642 c537- 68,600- 9,614-42	Lords Committee stage second day. Clause 3 agreed to. Consideration of Clause 4.	<a href="#">link</a>
19.12.02	642 c785- 843	Lords committee stage third day. Clauses 4, 5, 6 and 177 agreed to.	<a href="#">link</a>
13.01.03	643 c11- 79,96-122	Lords committee stage fourth day. Clauses 7-21 agreed to, clause 13 as amended. Schedule 3	<a href="#">link</a>

		agreed to. New clauses considered.	
16.01.03	643 c301-45,355-426	Lords committee stage fifth day. Clauses 22-156 agreed to, clause 87 as amended. New clauses considered. Schedule 4 agreed to.	<a href="#">link</a>
20.01.03	643 c435-92	Lords committee stage sixth day. Clauses 157-168 agreed to. Clause 169 as amended agreed to. Clauses 170-176, 178-196 agreed to. Schedules 5-7 agreed to, Schedule 8 as amended agreed to. New clauses considered. Bill reported with amendments (HL Bill 21 2002/03).	<a href="#">link</a>
20.01.03	HL Bill 21 2002/03	As amended in Committee (HL).	<a href="#">link</a>
17.02.03	644 c913	Lords motion on order in which amendments for Report Stage be marshalled and considered. Agreed to on question (formal).	<a href="#">link</a>
24.02.03	645 c10-44,61-81,95-116	Lords report stage first day.	<a href="#">link</a>
26.02.03	HL 63 2002/03	Delegated Powers and Regulatory Reform Select Committee (HL) twelfth report on Electricity (Miscellaneous Provisions) Bill, Water Bill (HL), House of Lords (Amendment) Bill (HL), Income Tax (Earnings and Pensions) Bill, European Parliament (Representation) Bill - Government response, Licensing Bill (HL) - Government response, and Ministerial and other Salaries (Amendment) Bill (HL).	
27.02.03	645 c379-416,435-96	Lords report stage second day.	<a href="#">link</a>
04.03.03	645 c709-88	Lords Report stage third day. Concluded. (HL Bill 40 of 2002/03).	<a href="#">link</a>
04.03.03	HL Bill 40 2002/03	As amended on report (HL).	<a href="#">link</a>

<i>11.03.03</i>	645 c1237-91	Command from the Queen that having been informed of the purport of the Bill has consented to place her prerogative and interests so far as they are affected by the Bill at the disposal of Parliament for the purposes of the Bill. Lords third reading. Privilege amendment made. Motion that Bill do now pass. Agreed to on question and sent to the Commons.	<a href="#">link</a>
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## Appendix 4: Liquor licensing statistics

Liquor licensing statistics were collected annually up to 1980, but following a Home Office review completed in that year, it was decided that they should only be collected once every three years.

Table A (page 56) provides details of the number of premises (off- and on-) licensed for the retail sale of alcohol. Table B (page 57) shows the number of new licences applied for and granted over the past twenty five years.

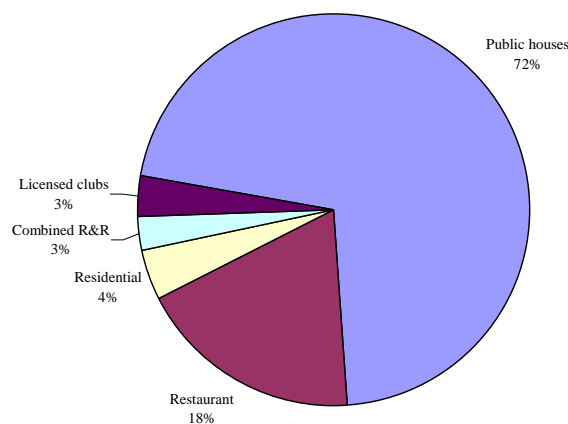
### *On-licences*

On 30 June 2001 there were 110,000 on-licensed premises, a fall of 1,300 from the number recorded in June 1998, the last time a full survey was carried out. Compared with 1989, however, the overall number of on-licences has risen by 4,200 (4%). There was a steady rise in the number of on-licences from the beginning of the 1960s until the early 1990s, since when the numbers recorded have fluctuated without an obvious trend.

Since 1980 the number of 'general' full on-licences (ie: public houses) has risen by almost 11,500 or 17%. Over the same period the number of residential or restaurant licences rose by over a third, although the number of such licences has fallen from a peak of over 31,000 in 1994.

The chart below shows that public houses accounted for the vast majority of on-licences (over 70%) at 30 June 2001. The figure in 1980 was closer to three-quarters, but over the past fifteen years the proportion has remained at around 70%.

**On-licensed premises by type, England and Wales, 30 June 2001**

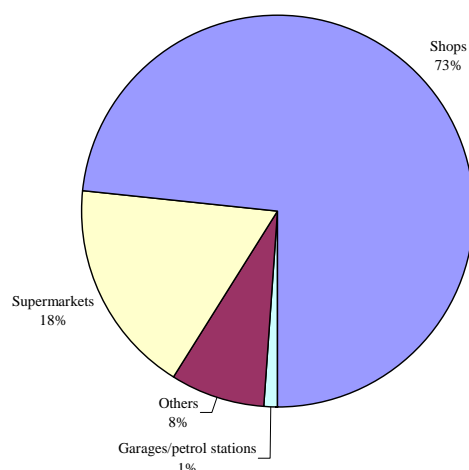


During the twelve months ending 30 June 2001 there were over 5,000 new applications for on-licenses, slightly higher than the number at the last enquiry three years ago. The success rate of 88% is virtually the same as the rate last time. 70% of the new applications were for public houses and 27% for restaurant and residential. Of the 3,500 full on-licences applied for 87% were granted. 91% of the restaurant and residential licence applications were granted.

### *Off-licences*

The number of off-license premises on 30 June 2001 was 44,700. This figure is approximately 700 below the figure recorded in 1998 and is the lowest total since 1986. The numbers of off-licences rose throughout the 1980s, but have since declined, though the numbers have tended to fluctuate from year to year.

**Off-licensed premises by type, England and Wales, 30 June 2001**



As the chart shows, shops possessing an off-licence continue to comprise the majority of off-licensed premises. This proportion, of nearly three-quarters, is similar to the level reported in 1998. Supermarkets<sup>65</sup> have increased their share slightly over the past three years from fifteen to eighteen per cent.

There were 2,350 applications for off-licences in the year ending 30 June 2001, 300 higher than the figures recorded in both 1995 and 1998, but lower than at any other time in the data period. Of the applications made over 2,000 were granted. This success rate (87%) is comparable to the rate recorded in 1995 and higher than every other year back to 1978.

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<sup>65</sup> Defined as those shops with a selling area of over 2000 sq. ft. or 186 sq. metres

*Licences revoked (Table C)*

In the twelve months ending 30 June 2001 a total of 183 licences were revoked – 132 on-licences and 51 off-licences. This is fewer than in recent years, but there are not yet sufficient entries to infer trends. The main categories of licences which were revoked were full on-licences and off-licensed shops other than supermarkets.

*Children's certificates*

In the year ending 30 June 2001 there were approximately 620 applications for children's certificates, of which 550 were granted. The total number of certificates issued since the scheme started in 1995 is now 4,600.

**Childrens certificates applied for and  
granted, 1995-2001, Year to June**

	Applications	Granted	Cumulative
1995	2,326	1,669	1,606
1996	1,322	1,066	2,674
1997	901	777	3,453
1998	749	672	4,078
2001	617	553	4,611

Source: Liquor Licensing, England and Wales, July 2000  
- June 2001, Home Office Statistical Bulletin 02/02

**Table A: Premises licensed for the retail sale of intoxicating liquor, registered clubs and theatres, England and Wales 1980-2001 at 30 June**

	On-licensed premises			Total	Off-licensed premises	Total on- and off-licensed premises	Registered clubs	Theatres
	Public houses etc	Residential and restaurant	Licensed clubs					
1980	67,091	20,622	3,089	90,802	37,252	128,054	26,889	241
1982	68,373	22,590	3,212	94,175	39,362	133,537	27,057	n/a
1983	69,136	23,679	3,363	96,178	40,853	137,031	27,192	261
1985	70,331	25,263	3,552	99,146	42,646	141,792	26,725	
1986	71,200	26,503	3,731	101,434	43,891	145,325	26,726	311
1988	71,875	28,411	3,845	104,131	44,888	149,019	26,186	n/a
1989	72,712	29,426	3,934	106,072	45,507	151,579	26,015	271
1991	74,299	31,106	3,926	109,331	47,944	157,275	25,073	n/a
1992	74,053	29,787	3,798	107,638	46,063	153,700	25,073	242
1994	75,522	31,409	4,281	111,212	47,735	158,947	24,239	n/a
1995	75,392	30,042	4,272	109,706	45,986	155,692	24,005	272
1997	78,098	31,223	3,951	113,272	47,753	161,025	22,836	n/a
1998	77,934	29,779	3,847	111,560	45,425	156,985	22,614	270
2000	77,876	28,774	3,996	110,646	45,450	156,096	21,036	n/a
2001	78,540	27,968	3,748	110,256	44,696	154,952	22,037	218

Source: Liquor Licensing, England and Wales, July 2000 - June 2001, Home Office Statistical Bulletin 02/02



**Table B: New licences and premises applied for and granted, England and Wales, 1976-2001**

	On-licensed premises						Off-licensed premises						Off- and on licensed premises				
	Public houses etc.			Residential and Restaurant			Licensed clubs			Total			Total			Registered clubs	
	Applied for	Granted	Applied for	Granted	Applied for	Granted	Applied for	Granted	Applied for	Granted	Applied for	Granted	Applied for	Granted	Applied for	Granted	Applied for
1976	1,297	1,163	1,597	1,544	269	149	3,163	2,856	2,429	2,221	5,077	5,592	844	838			
1977	1,389	1,218	1,860	1,803	234	209	3,483	3,230	2,866	2,559	5,789	6,349	866	851			
1978	1,403	1,213	2,034	1,968	225	210	3,662	3,391	2,747	2,437	5,828	6,409	858	848			
1979	1,318	1,178	2,137	2,052	235	206	3,690	3,436	2,832	2,443	5,879	6,522	761	747			
1980 (a)	1,436	1,226	2,285	2,168	225	205	3,946	3,599	2,910	2,384	5,983	6,856	729	725			
1983	1,806	1,493	2,139	1,992	316	282	4,261	3,767	3,394	2,624	6,391	7,655	694	683			
1986	2,201	1,826	2,351	2,274	369	340	4,921	4,440	3,407	2,607	7,047	8,328	537	510			
1989	2,354	1,937	2,493	2,341	264	238	5,111	4,516	2,707	2,139	6,655	7,818	373	368			
1992	2,188	1,878	1,679	1,568	172	157	4,039	3,603	2,136	1,712	5,315	6,175	444	433			
1995	2,371	2,128	1,469	1,403	206	198	4,046	3,729	2,078	1,823	5,552	6,124	684	639			
1998	3,261	2,785	1,557	1,485	163	159	4,981	4,429	2,053	1,689	6,118	7,034	707	539			
2001	3,522	3,072	1,338	1,211	152	142	5,012	4,425	2,351	2,057	6,482	7,363	1,126	1,045			

Notes (a) Liquor licensing statistics were collected annually up to 1980, but following a Home Office review completed in that year, it was decided that they should only be collected once every three years.

Source: Liquor Licensing, England and Wales, July 2000 - June 2001, Home Office Statistical Bulletin 02/02

**Table C: Licences revoked, 1992-2001**

	Public houses, etc			Residential			Combined restaurant and residential			Total on-licensed premises			Total off-licensed premises			Total on- and off-licensed premises		
	Public houses, etc	Restaurant	Residential	Restaurant	Residential	Combined restaurant and residential	Licensed clubs	Supermarkets	Others	Other off-licensed premises	Total off-licensed premises	Total on-licensed premises	Others	Supermarkets	Total on- and off-licensed premises			
1992	131	32	24	9	20	216	2	34	10	46	262	2	34	262				
1995	141	62	36	16	7	262	13	96	7	116	378	7	96	378				
1998	165	34	6	2	8	215	9	84	9	102	317	9	84	317				
2001	99	21	8	1	3	132	2	39	10	51	183	2	39	183				

Source: Liquor Licensing, England and Wales, July 2000 - June 2001, Home Office Statistical Bulletin 02/02