

Public Entertainments Licences (Drug Misuse) Bill 1996-97 Bill 17

Research Paper 97/2

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The Bill is to be debated on second reading on 17 January 1997. It is designed to enable local authorities to close down licensed dance venues where the police consider that there is a serious drugs problem. This paper describes the public entertainments licensing system which does not allow the authorities to deal rapidly with premises perceived to have problems, and the concerns of the industry about what is proposed to remedy the situation.

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I The entertainments licensing system in England and Wales

The main purpose of the entertainments licensing system is to ensure public health and safety at places of public entertainment and to minimise the nuisance caused to the immediate neighbourhood.¹

Before 1983, when the Local Government (Miscellaneous Provisions) Act 1982 came into force (the 1982 Act), there had been a patchwork of controls operated by local authorities and licensing justices. Under S.1 of the 1982 Act, local district councils became responsible for the licensing of public entertainments which included music and dancing. In London, however, the London Government Act 1963 (the 1963 Act) continued to apply, with licensing control being exercised by London Borough Councils after the abolition of the Greater London Council in 1986.

Schedule 1 of the 1982 Act, therefore, sets out the requirements for licensing outside London, in England and Wales. Sch. 1 para 1 requires the licensing by the appropriate local authority of any place used for indoor public dancing or music or other public entertainment of a like kind but not for music in a place of public religious worship or when incidental to a religious meeting or service. There is an adoptive provision which, if a council so resolves, requires the licensing of any public musical entertainment which is held in the open air and on private land. This enables councils to exercise control over open air events such as pop or rock concerts or festivals.

An applicant for the grant, renewal or transfer of a licence is required to give 28 days notice to the licensing authority, the chief office of police and to the fire authority, but there is no requirement for publicity to be given in, say, a local newspaper. Para 6(3) of Sch. 1 does, however, allow the authority to require an applicant to "give such other notices" as they may by regulation prescribe, and many licensing authorities do require applicants to give notice to the public either by means of a notice on or near the premise, or by a newspaper advertisement, or both. Licences may be granted and renewed on an annual basis, or for shorter periods or for particular occasions. Some authorities have, for example, March 31 as the annual expiry for all licences, so when a licence is first granted it will run only until that date. A provisional licence may be granted and confirmed at a later date. A licence may be varied or transferred. The council may make regulations prescribing standard conditions for the grant, renewal or transfer of licences and a licence may be subject to such terms, conditions and restrictions as specified by the council.

¹ Home Office consultation paper: Review of public entertainment licensing, January 1996

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Where an application for outdoor musical entertainment is being considered, however, the council may attach conditions only for purposes specified in Sch. 1 para. 4(4): for securing safety, emergency access, adequate sanitation and the prevention of disturbance to the neighbourhood.

There is under Sch. 1 para. 17, a right of appeal to the Magistrate's Court and then to the Crown Court against a refusal to grant, renew or transfer a licence; or against a refusal to vary the terms; conditions or restrictions of a licence; or when a licence is revoked.

The 1982 provisions were based on the *London Government Act 1963*, but with the significant difference that in London licences are mandatory for all music and dancing held wholly or mainly in the open air. Notice to the council and fire authority is required, as under the 1982 Act, in all cases. Notice to the police is needed only for grant and transfer applications of a full licence. It is not required for renewal applications of a full licence nor for any occasional licence application. The period of notice also differs according to the type of application made: 21 days for grant or transfer, but 28 days for renewal. Occasional licences require a reduced period of notice: 14 days. Under the 1982 Act, the period of notice is the same - i.e. 28 days for all types of application.

The *Private Places of Entertainment (Licensing) Act 1967* as amended is an adoptive Act which enables local authorities to apply to in their area licensing controls previously used for dancing, music or any other entertainment which is not a public entertainment, but is promoted for private gain. This Act is not affected by the proposals in the current Bill.

Procedures for determining licence applications

Neither the 1982 Act nor the 1963 Act for London give much indication as to how licence applications should be determined. Under Sch. 1, para. 6(4) of the 1982 Act, authorities are obliged to have regard to observations submitted by the police and fire authorities in considering applications for the grant, renewal or transfer of a licence. The 1963 Act however, does not contain such an express requirement though it is of course likely that they will be taken into account and influential in the final decision.

All local authorities have, therefore, a very wide discretion over whether or not to grant entertainment licences and to attach terms and conditions to any licence granted (except that those conditions which may be applied to open air entertainments under the 1982 Act are limited - see above). The legislation makes no mention of observations or objections from persons other than the police or fire authority, what procedures should be adopted by the licensing authority when determining a licence application, what considerations may be taken into account, nor on what grounds an application might be refused.

Certain general considerations do apply, however. The licensing committee is exercising a quasi-judicial function in which the principles of natural justice apply. Failure to observe these could make the decision subject to judicial review. These rules include

- the requirement for a fair hearing (*audi alteram partem*) under which both sides should be heard before a decision is taken. Thus, where there are observations or objections whether from police, fire authority or members of the public, the applicant should be informed of the existence and substance of such objections. This was held in *R v Huntingdon District Council, ex p. Cowan* [1984] 1 WLR 508, cited by Manchester:²

"The exercise of a licensing function, in my judgment, by any authority, is one to which the rules of natural justice-including the requirement of giving notice of the substance, at least, of objections, and of giving some opportunity for the applicant to respond to those objections-would normally apply.

. . . Accordingly, in my judgment, a local authority is under a duty, when dealing with entertainments licences, first, to inform the applicant of the substance of any objection or of any representation in the nature of an objection (not necessarily to give him the whole of it, nor to say necessarily who has made it, but to give him the substance of it); and, secondly, to give him an opportunity to make representations in reply."

- that there should be no bias (*nemo iudex in causa sua*) i.e. that no member of the committee should be a judge in his or her own cause. This includes not only the possible declaration of pecuniary interest but also of any personal relationship with an applicant. Though the legislation is silent as to what should be taken into consideration when an application is being determined, various factors will, in practice, be taken into account. These include the fitness of the applicant which is alluded to in Sch. 1 para. 15 of the 1982 Act in the context of the *provisional* grant of a licence, though not to grants generally. This provides that the authority may confirm any provisional licence *inter alia* "if and when they are satisfied... that the licence is held by a fit and proper person". The licence application may require disclosure of any convictions and authorities differ on this point. Where criminal records are required to be revealed this may have to include convictions which have become spent under the *Rehabilitation of Offenders Act 1974*. Applicants may be asked to give the consent to any spent convictions being disclosed to the authority by the police. Manchester states "If the application has convictions and these have some relevance to him holding a licence, as is the case with convictions for breach of the licensing laws, he may be considered unfit to hold a licence".³

Secondly, the authority is likely to consider the nature of the entertainment, and finally the suitability of the place at which the entertainment is to be provided. This can include

² Entertainment Licensing, Law and Practice 1994, p.53

³ Op. cit. p.60

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consideration of the physical suitability of the premises, their condition and location, as well as the question whether they have acquired a disorderly character or reputation. Thus the main considerations for the grant of a licence will, like the sort of conditions which may be attached to it, fall under three main headings; public safety, public health and public order.

Many public entertainments at dance clubs or discotheques take place on premises which are licensed for the sale by retail of alcoholic drink. Such licences are granted by licensing justices rather than the local authority, under the licensing Act 1964 (the 1964 Act), and many venues have special hours certificates under s.76.

A special hours certificate may be granted to the holder of a justices' licence who also holds a music and dancing, or entertainments, licence for the premises. The licensing justices must be satisfied that the whole or any part of the premises is structurally adapted and used for the provision of music and dancing and substantial refreshment, to which the sale of alcoholic drink is ancillary. As with the grant of the basic licence, the justices have an unfettered discretion in the granting or refusal of special hours certificates and on the limitations which may be imposed. *Patersons' Licensing Laws 1996* comments in a footnote to s.78A "the Act is silent as to what matters might properly be taken into account when considering the imposition of limitations upon the certificate. It is submitted that limitations might be imposed in order to avoid or reduce incidents of public order, disturbance or annoyance to residents in the vicinity of the premises, even though such matters may not be within control of the applicant. The principle established in *Lidster v Owen* [1983] 1 All ER 1012, [1983] 1 WLR 516, which confirmed that when exercising their discretion to renew a licence the justices were entitled to consider behaviour outside the premises, would have equal application on the grant of a certificate and whether limitations should be imposed".⁴ *Paterson* also comments "In exercising their discretion the justices must act in a judicial manner and not in an arbitrary or administrative way and must take each application on its merits".⁵

The Licensing (Special Hours Certificates) Rules 1982 (S.I. 1982/1384) as amended require the applicant to give 21 days notice of his intentions to the chief officer of police and the clerk to the licensing justices, to display for seven days a notice of his intention to make the application on or near the premises and to advertise the fact in a newspaper circulating in the area. A person who intends to oppose the application must give notice of this not later than 7 days before the licensing sessions. The effect of such a certificate is to extend the permitted hours for the premises on every weekday or on particular weekdays until 2am; or 3am in some places in the London area.

⁴ loc cit p.431

⁵ ibid p.43

Enforcement of licences

Sch. 1 para. 12 of the 1982 Act creates the offences of organising or allowing entertainments to take place without a licence or in breach of licence conditions. Where music and dancing is unlicensed, or the breach of conditions involves the presence of numbers of people over the prescribed limit, the maximum penalty is a fine of £20,000 or imprisonment for up to six months or both.⁶ Other offences attract a maximum fine of £5,000. Magistrates may order confiscation of profits over £10,000 made by persons convicted of offences for which maximum penalties were increased by the 1990 Act.⁷ A person guilty of an offence may have his licence revoked under para. 12(4).

Similar penalties are available in London under the 1963 Act, but here Sch. 12 para. 10(3)(b) provides for a term of imprisonment of up to three months instead of or in addition to the £5,000 maximum fine for the lesser offences. Revocation powers in the event of conviction for offences under this legislation are provided by Sch. 12 para. 10(4).

Revocation of public entertainments licences

On the general question of revocation, *Manchester* comments as follows on the 1982 Act:⁸

No revocation procedure is contained in the Act, so it will be for the authority to fix a hearing date, decide the format of the hearing, and determine the way in which the hearing is to be conducted. Since the authority can determine the format of the hearing, it would seem to be open to them to deal with the matter by means of written representations. However, in view of the gravity of this course, it may be more appropriate for an oral hearing to be held at which the licence holder can make representations for the continuation of the licence.

As with a licence renewal application to which there are objections, the licence holder should be notified of the substance of the case against the continuation of the licence and be given an opportunity to respond. Notwithstanding the fact of conviction, the principles of natural justice require that the licence holder has an opportunity to put his case, drawing attention, in particular, to any mitigating circumstances, and to seek to persuade the authority not to exercise their discretion to revoke. The authority are under a duty to act fairly and in accordance with the rules of natural justice just as much when considering revocation of a licence as

⁶ *Entertainments (Increased Penalties) Act 1990*

⁷ Criminal Justice Act 1988 (Confiscation Orders) Order 1990 SI 1990/1570

⁸ loc. cit. p.92

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when considering licence applications.

Under Sch. 1 para. 17, there is a right of appeal against revocation, exercisable within 21 days of notification of the decision, first to the magistrates' court and then to the Crown Court. Para 17(7) makes it clear that where an entertainments licence is revoked or the renewal of such a licence is refused, the licence shall be deemed to remain in force until the time for bringing an appeal has expired or the appeal has been determined. Similarly, if the imposition of new conditions or restrictions is proposed, they shall not apply until the time for appealing has expired or the appeal has been determined or abandoned. The 1963 Act contains similar provisions.

Both the 1982 and 1963 Acts provide powers of entry and inspection for police officers, authorised officers of the licensing authority or an authorised officer of the fire authority:

- Under Sch. 1 para. 14(1) of the 1982 Act these officers may enter licensed premises where an entertainment is being or is about to be given "with a view to seeing whether the terms, conditions or restrictions on or subject to which the licence is held are complied with".
- Under para. 14(2) an officer of the fire authority may, on giving 24 hours' notice, enter and inspect licensed premises to ensure that there are adequate fire precautions and that licence conditions about fire precaution are being complied with.
- Under para. 14(3) a police officer or authorised officer of the licensing authority has power of entry if he has reason to believe that if he suspects that an offence under para. 12 is being committed and if he has obtained a justices' warrant. This power can be exercised both in licensed premises where a breach of conditions is inspected, or unlicensed premises where it is suspected that unlicensed entertainment is being provided.
- Under para. 14(5) any person who without reasonable excuse refuses to permit such inspections is guilty of an offence, and for every such refusal can be liable to a fine of up to £1,000.

Para. 12 of Sch. 12 of the 1962 Act provides broadly similar powers of entry and inspection in London, but the power of entry where an entertainment is being or is about to be given is limited under para. 12(1) to "at all reasonable times", and there is no corresponding power for an officer of the fire authority to enter and inspect licensed premises on giving 24 hours' notice.

Consistency and transparency

The 1996 consultation paper raised the question of the scope for requiring local authorities to follow the enforcement procedures in S.5 and Sch. 1 to the *Deregulation and Contracting Out Act 1994*. This provides five new powers which may be exercised by order, the aim being to improve fairness, transparency and consistency of procedures for enforcing restrictions or requirements or conditions affecting anyone in the carrying on of a trade, business or profession. In this context, enforcement action included any refusal to grant, renew or vary a licence, the imposition of any conditions on the grant or renewal of a licence and any variation or revocation of a licence. The five powers were set out as follows:

(1) **Explanation of suggested remedial action**

This is a power to require that when for a local authority advises a business about action to be taken in order to avoid formal enforcement action, it would, on request, have to provide a written statement of what action is needed and why.

(2) **Explanation of immediate enforcement action**

This power would require a local authority, where they take enforcement action which would have an immediate and costly effect on the business concerned, to provide a statement as soon as is practicable explaining the reasons for the immediate action.

(3) **Right to make representations**

This power would mean that when the local authority was considering taking enforcement action they would first provide the business with written notice giving the reasons why the action was being considered; the business would then be entitled to have its point of view heard and taken into account within a specified period before any formal action was taken.

(4) **Explanation of right of appeal**

This requires that when formal action is taken, the business should be told exactly what rights it has to appeal

(5) **Application of provisions to other interested persons**

This means that the provisions of the first four powers could be applied to a person who had a direct and significant economic interest in an enforcement decision even though he or she was not the one who was the subject of the enforcement action.

The paper acknowledged that in many cases, local authorities would already be following the approach set out above, but went on to say "... However the Government considers that business should have the right to a clear written explanation of what action an enforcement official wants them to take and the right to put their point of view before action is taken, unless it is a genuine emergency".

II The nightclubs and discotheque industry⁹

In March 1996 there were just under 4,078 nightclubs and discotheques in the UK and the value of the market was expected just to exceed £2 billion in 1996. The industry employs more than 130,000 people. Income is derived from two main sources: admission fees and the sale of drinks, with the latter accounting for more than two thirds of the sales of the typical value.

Of the larger premises which have a capacity of over 300, are actively promoted and numbered 1973 (48% of the total) in 1996, fewer than 200 are owned by the 7 leading multiple operators. Rank Leisure is the largest operator as far as numbers are concerned, with a total of 48 outlets, but comes second to First Leisure in terms of market share. The top seven operators account for 16.5% of admissions and 13% of revenues. In general however, the market is fragmented with many independently owned clubs and discos. In addition, many entertainments will be one-off or irregular events.

The vast majority of customers is in the 18-24 age range. In 1996, total admissions to nightclubs and discotheques was 173 million, with 9.3 admissions per visitor and an average spend of £11.59. Admission fees of £15 or, for special occasions such as New year, £25-35 are apparently not unusual.

The London Drug Policy Forum state that "London is without doubt, the entertainment capital of Britain. In any one week there are almost 200 licensed dance events according to *Time Out*. The number of different events is overwhelming. They cater to the needs of different ages, different tastes in music and different trends and fashions".¹⁰

Among the types of event on offer are "raves" at which a particular kind of electronic music, sometimes characterised by its repetitive beat, is played.

⁹ Information supplied by the British Entertainment and Discotheque Association - BEDA

¹⁰ Dance till dawn safely. A code of practice on health and safety of dance venues

III Drug misuse at public entertainments and government strategy at local level

The Advisory Council on the Misuse of Drugs (ACMD) in their 1994 Report on Drug Misusers and the Criminal Justice System record that "Over the past thirty years or so, drug misuse by the young has been viewed mainly in the context of youth culture and popular music together with the recreational use of drugs to enhance the experience of leisure activities". Research for the entertainments industry has revealed that the association of drug-taking with clubs and discotheques is a widely held perception which threatens the image of the industry.

The British Entertainment & Discotheque Association (BEDA) has produced a misuse of drugs manual to provide advice on indications that drug misuse is occurring and action to be taken in entertainments premises. It contains an appendix on the "rave" scene and ecstasy, which concludes "Management who wish to retain the good will of the local police, licensing justices and even HM Coroner, are advised to consider seriously the wisdom of holding "rave" sessions in their premises". BEDA's "Stay Drug Free" package includes a video aimed at the management and staff of clubs, as well as posters urging customers to inform staff if they see people with drugs on the premises.

The London Drug Policy Forum stress the need to see the problem in context:¹¹

Drugs have been associated with music and youth culture for many decades. The most consistent and abiding drug choices for young people when going out to enjoy themselves are alcohol and tobacco. Additionally, alcohol can be a major source of violence, intimidation and harassment in social settings such as dance events. Licensees are reminded of their responsibilities under the Licensing Act 1964 in this respect. In terms of sudden death, alcohol is also the most lethal leading to approximately 150 deaths a year.

Illicit drugs and other stimulants change according to fashions, fads and availability. What is different now, however, is the sheer scale of illicit drug misuse and the extent to which it has become enmeshed in dance and youth culture. It is estimated that up to one million ecstasy tablets are sold each week in Britain. Almost all of these will be taken in the context of dancing and entertainment.

¹¹ Dance till dawn safely, p.5

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A written answer to a PQ by Paul Flynn MP on 16 December 1996 compared numbers of deaths from ecstasy and alcohol poisoning, though it was not possible to show where the substance was consumed:¹²

Ecstasy

Mr. Flynn: To ask the Chancellor of the Exchequer how many deaths that involved (a) ecstasy as the sole drug concerned and (b) alcohol poisoning, occurred after the victims consumed the substances (i) in clubs, (ii) in public houses, (iii) at raves and (iv) elsewhere, in each of the last five years.

Mrs. Angela Knight [*holding answer 2 December 1996*]: The information requested falls within the responsibility of the chief executive of the Office for National Statistics. I have asked him to arrange for a reply to be given.

Letter from Tim Holt to Mr. Paul Flynn, dated 16 December 1996:

The Chancellor of the Exchequer has asked me to reply as the Director of the Office for National Statistics to your recent question on how many deaths resulted from ecstasy, or poisoning from alcohol after the victims consumed the substances in (i) clubs (ii) public houses (iii) raves and (iv) elsewhere, in each of the last five years.

ONS do not hold this level of detail as to where the substance which caused the death was consumed. The information is not recorded on the death certificate nor by the coroner, and would be very difficult to record with any degree of accuracy. Alcohol, for example, may have been consumed in a number of different places.

The following table shows, (a) the numbers of deaths where Ecstasy was the sole drug mentioned and (b) the numbers of deaths from alcohol poisoning, in England and Wales in the last five years.

<i>Year</i>	<i>Deaths from ecstasy¹</i>	<i>Deaths from alcohol poisoning²</i>
1991	6	152
1992	5	126
1993	12	138
1994	10	123
1995	15	130

¹ Deaths in which Ecstasy was the only drug mentioned on the death certificate. None of these deaths included mention of alcohol.

² International Classification of Diseases, 9th revision, code 980.

¹² HC Deb 287 c.434-6W

Ecstasy, or MDMA, is the drug most closely associated by the public with the rave scene and receives most media attention. It is a synthetic stimulant, scheduled as a class A drug under the *Misuse of Drugs Act 1971*. According to the Institute for the Study of Drug Dependence, it was first synthesised in 1912, "but no medical or commercial use could be found for it until marital therapists in America discovered its potential for encouraging empathy between clients and diffusing anger and hostility".¹³

The AMCD comment:¹⁴

6.6 The health and safety hazards connected with the rave scene have been well publicised. There have been a number of deaths associated with the use of Ecstasy. Published statistics show that at least fourteen deaths attributed to Ecstasy or similar drugs were registered by 1991 and there have been press reports of a number of more recent deaths apparently from Ecstasy use which may not yet have been reflected in official statistics. The pharmacological actions of Ecstasy on the brain are such as to disturb the control of body temperature. In addition, some misusers may have medical conditions which make them especially susceptible to the effects of Ecstasy. The problem of drug misuse at raves is worsened by the adulteration of substances and the conditions at venues. Raves tend to be crowded and hot which interferes with heat loss from the body. The dancing of users may be extremely vigorous and prolonged and this extensive physical activity also helps to raise body temperature. These factors can result in severe increases in body temperatures and dehydration levels which are thought to have been the causes of the reported deaths. It is also thought that some individuals are inherently more vulnerable to the effects of the drug. Lack of drinking water and/or high prices charged for water and soft drinks which occur particularly at the illegal or poorly organised raves together with poor or nonexistent facilities for cooling off add significantly to the health risks.

They also point out, however, that the reports of tragic deaths resulting from using Ecstasy have tended to overshadow concerns about the potential for far greater loss of life at raves resulting from a crowd disaster:¹⁵

We were told that at many illegal raves, and some legal ones, the number of people present far exceeds the safe capacity of the venue. Illegal raves are often held in disused industrial premises without fire equipment, ventilation or safety lighting. Fire escapes may be blocked and the parked cars of ravers in unsuitable settings would prevent emergency service responding effectively in the event of an incident. Crowds packed into unsuitable premises or sites also inhibit direct police action as this could create a panic with disastrous consequences. These factors have led us to conclude that a harm reduction approach to the rave scene is the most appropriate course of action. Faced with the dilemma of taking enforcement action or preserving public safety we endorse the view we heard from some police officers who advocated the latter option. Overall, the objective should be to encourage well managed legal raves at the expense of the illegal events where the risk to health and public safety are considerable.

¹³ Drug abuse briefing, 6th ed; 1996

¹⁴ loc cit. p.42

¹⁵ ibid. pp 42-43

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Drug Misuse is defined as the non-medical use of drugs that are intended only for use in medical treatment, and the use of drugs that have no accepted medical purpose. Such drugs are listed in Schedule 2 to the *Misuse of Drugs Act 1971* and classed as A, B, or C according to the level of danger associated with their use and their relative harmfulness. Class A drugs include heroin, cocaine, morphine, LSD and ecstasy. Class B drugs include amphetamines and cannabis, while Class C drugs include tranquillisers:

- S.4 of the Act creates the offences of supplying or offering to supply a controlled drug to another or to be concerned in supplying or offering to supply such a drug.
- S.5(2) creates the offence of having possession of a controlled drug.
- S.5(3) creates the offence of having possession of a controlled drug with intent to supply it to another.

Class A drugs attract the highest penalties: the maximum sentence for conviction on indictment for supplying a controlled drug in this category is life imprisonment, or a fine or both. The penalty for simple possession in these circumstances is a maximum of 7 years or a fine or both.

- S.8 creates the offence of being the occupier, or concerned in the management, of premises and permitting or suffering certain activities including offering, supplying or attempting to supply to take place there. For the above offence involving a Class A or B drug, the maximum sentence for conviction on indictment is 14 years or a fine or both, and for a Class C drug 5 years or a fine, or both.

Sentences are set out in Sch. 4 of the Act as amended.

The White Paper *Tackling drugs together. A strategy for England 1995-1998*¹⁶ stressed the need for caution in promoting harm reduction policies:

3.5 The Government places a very strong emphasis on preventing young people from misusing drugs in the first place. But there will still be some who choose to experiment even if they have both the knowledge of the risks and the skills to resist peer pressure. Efforts should therefore also be made to protect those who are at risk by a range of responsible measures, often expressed as 'harm minimisation' or 'harm reduction', because this may save lives. These must not imply that drug misuse is tolerated or condoned. For example, at clubs or similar venues where large numbers of young people are dancing, there are general risks of fatigue and dehydration. Owners or those responsible for organising such gatherings should provide suitable health and safety measures, including freely available cold drinking water, irrespective of whether drugs are being taken. However, the Government is opposed to information or facilities which suggest that drug misuse is tolerated or which understate the

¹⁶ May 1995, Cm 2846

legal or health risks, whether or not they claim to be based on the principles of harm minimisation. It would also expect harm minimisation measures in respect of young people at such venues to be balanced by vigilant efforts to control the supply or possession of drugs on the premises.

The focus of the strategy set out in the White paper is on three areas: Crime; young people and public health. As far as young people are concerned it promised *inter alia* funding of £5.9 million to be available for schools in 1995-96 to train teachers and support innovative projects in drug education. To contribute locally towards the national strategy aimed at law enforcement and demand reduction it proposed the setting up of Drug Action Teams consisting of senior representatives from the police, probation and prison services, local authorities and health authorities. These teams are to be supported by Drug Reference Groups established to provide them with a source of local expertise whose membership is to include voluntary and statutory service providers, drug service users, doctors, school governors and local business interests. The remit of each Group is to assess the nature and scale of local drug misuse problems and to provide a local forum to exchange information about good practice and new initiatives.

Funding of £8.8 million is to be made available over the three years of the strategy to support these groups. In answer to a PQ on 25 November 1996, the Local President of the Council referred to the fact that there are 105 drug action teams across England.¹⁷

IV The immediate background to the Bill

Public awareness of the association between public entertainments venues and the misuse of drugs was heightened by media reports of the tragic death of Leah Betts and the subsequent trial of the student who admitted helping to supply her with the ecstasy tablet which killed her. The drug was obtained at a local nightclub, though not taken there. According to a report in the *Times*, 12.12.96,¹⁸ the person who had been responsible for security at this club was implicated in the supply of drugs and was shot in a triple killing in 1995.

Attention has also been focused on the problems arising out of attempts to close Club UK in Wandsworth, where the licensing committee refused to renew its entertainments licence in May 1996.

¹⁷ HC Deb 286, c.49W

¹⁸ "Murdered drugs dealer linked to Leah Betts Death"

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The club had been associated with two drug related deaths, and under-cover police operations suggested that drugs were readily available there. This was confirmed in March by the experience of council officials. The club lodged an appeal and the hearing began in November. Judgment was reserved on 19 December and the decision to uphold the council's refusal announced on 6 January. The stipendiary magistrate was reported, however, to have commended the club for efforts made to counter its reputation by installing a video surveillance system, stepping up searches and co-operation with the police.¹⁹ Though the club had closed in November for reasons connected with the expansion of its capacity and negotiation for additional premises, it could under existing legislation have remained open despite the refusal to renew the licence and the upholding of this decision, because an appeal has now been lodged with the Crown Court. A Press Association release of 2.1.97 quoted a local Councillor as saying "We took our decision last June. It has taken until today to win the appeal. And if there is a further appeal that could take several more months. In the meantime, there is nothing to stop the club staying open".²⁰

At the Conservative Party Conference on 8 October 1996, the Home Secretary announced a proposal to make possible the revocation of public entertainment licences and closure of premises with immediate effect in cases where there is clear evidence of a serious problem relating to the supply or consumption of controlled drugs on or near the premises:

Protection from drugs. Strong, clear messages must be sent to children in the home and at school. But that isn't enough. We must do all we can to stop drugs getting into our children's hands. Action at the ports. Action on the streets. Action in the clubs.

A year ago a bright young girl with her whole life ahead of her celebrated her 18th birthday. Her name was Leah Betts. She took just one tablet of ecstasy bought in a club. Hours later she was dead. We owe it to Leah's parents - and millions of other parents - to stop the pushers poisoning our children.

Clubs are a magnet for drug pushers. They know there's a ready market among vulnerable youngsters. Sometimes the clubs are in on the act - the bouncers, the managers, even the Owners. The police often know which clubs these are. But they can't close them because they don't have the powers they need. Even if they succeed in getting a licence scrapped, the owner can appeal. That can take up to a year. And meanwhile the club stays open. The drugs are still sold. The dangers to our children remain. That cannot be right. The law must change. And I am determined to change it.

In future when a licence is scrapped because of drugs the club will shut. Not later that year. But straight away. We can't take any risks with the lives of our children.

¹⁹ *Daily Telegraph*, 3.1.97 "Nightclub with bad name loses licence fight"

²⁰ PA: "Court backs Council over club licence refusal"

V The Bill

The bill to give effect to these proposals has been introduced by Barry Legg MP who came second in the ballot for private Members' Bills. It extends only to England and Wales. Mr Legg's description of the measure in the *House Magazine*, 2.11.96, is reproduced as appendix I to this paper.

Clause 1(3) amends Schedule 1 to the Local Government (Miscellaneous Provisions) Act 1982 by adding a new paragraph 6A to provide specific grounds on which a licensing authority may refuse to renew or transfer a licence. These are that having received a report from the Chief Officer of police that there is a serious problem relating to the supply or use of controlled drugs at or near the place, the authority is satisfied that not renewing or transferring the licence will assist in dealing with the problem. Sub-para (3) of para. 6A requires the authority to give reasons for their refusal to the holder of the licence and the person to whom the licence would have been transferred if the application had been granted. Under sub-para (4) such a person may make representations to be considered by the authority within 21 days of receipt. Then, unless the licence has expired in the meantime, the authority is to confirm the refusal or grant the application.

The procedure for representation does not have suspensory effect: the effect of refusal to renew or transfer a licence is immediate. The amendment does not include any time limit for the making of representations to the authority: it is assumed that faced with closure an ex-licencee will act rapidly if he is going to object.

Clause 1(4) proposes the insertion of new para. 11A. In the circumstances of a report from the Chief Officer of police as described above, the authority is empowered to revoke the licence or to impose terms, conditions or restrictions on or subject to which it is to be held, on the ground that they are satisfied that to do so will assist in dealing with the drugs problem identified.

Representations may be made by the holder of the licence in the same conditions as set out in new para. 6A. After considering them the authority is required either to confirm that the licence remains revoked or continues to have effect on or subject to the terms conditions or restrictions imposed on it, or to reinstate the licences, or lift the terms conditions or restrictions.

Clause 1(5) adds to para. 12 of Sch. 1 to the 1982 Act (conviction for offences) and enables a court which has convicted a person for the offence of breach of conditions of a public entertainments licence, itself to revoke the licence if satisfied that there is a serious problem

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relating to the supply or use of controlled drugs on or near the premises and that such action will assist in dealing with the problem. The standard of proof here is the civil one of the balance of probabilities - i.e. that it is more likely than not, rather than beyond reasonable doubt.

Where there is an appeal under Sch. 1 para. 17 of the 1982 Act against the decision of a local authority to revoke or refuse to renew a licence on the grounds of a drug problem, but not otherwise, the licence is suspended while the appeal is disposed of. Clause 1 6(a) provides that where a court revokes a licence on such grounds, the licence is suspended pending the determination of any appeal, but the court has the power "if in the particular circumstances it would be unfair not to do so" to order that the licence remain in force until the appeal is determined.

Clause 2 proposes similar amendments to the London Government Bill 1963, Sch. 12.

The nightclub industry as represented by BEDA are broadly in support of the principles underlying the Bill, but are concerned what they see as the arbitrary nature of the new power which they think could be "used inconsistently, punishing owners and operators who generally run safe establishments and are committed to keeping illegal substances out of the nightclubs". They seek safeguards for owners and operators, as do Business in Sport and Leisure, BISL whose members include companies who have entertainments licences for nightclubs, clubs and pubs.

Both organisations seek a requirement to be included in the Bill for a formal caution to be issued to the licensee and owner so that he/they could seek to remedy the situation before action was taken to close the premises. They acknowledge that the person involved has to be informed under the Bill when the decision has been taken, but BISLA suggest that "in effect they are already proven guilty and only have the right to make representations once the decision has already been taken to close them".

They also advocate the provision of an opportunity to appear before and to be heard by the authority before any decision to revoke or refuse to renew is implemented. This would be similar to the provision in Sch. 3 of the 1982 Act which relates to sex shop licences. Para. 17 gives the authority the power to revoke a licence "after giving the holder of a licence under the Schedule an opportunity of appearing before and being heard by them". It goes on to provide that where a licence is revoked, the appropriate authority shall if required to do so by the ex-licensee, give him a statement in writing of the reasons for their decision within 7 days of being asked for it.

BEDA also suggest that there should, in exceptional circumstances which require closure without delay, be a power of temporary closure during which the licence would remain in force.

Other points made are:

- that the police report should be given to the owner and licensee.
- that the police *have evidence* that there is a serious problem should be written into the Bill.
- that the word 'near' in connection with licensed premises is the vague, and could place responsibility on the licensee for public property over which they have no control. It is suggested by BISL that "at" would include the immediate surroundings of the premises.
- that there should be a fast-track appeal procedure.
- that guidance should make it clear that revocation should be a matter of last resort.

VI Safety at clubs and model conditions

In February 1996 a draft circular was issued by the Home Office on the health and safety of young people at dance events and clubs. This provided model licence conditions designed to encourage measures to improve the health and safety of young people, with particular emphasis on reducing the availability and acceptability of drugs. The conditions were not intended to be prescriptive but to enable local authorities and agencies as well as the organisers of dance events, to devise conditions which meet local needs and circumstances.

The model conditions were prefaced by the following general considerations:

- The onus to be placed squarely on the holder of the licence to provide health and safety measures, irrespective of whether drugs are being taken.
- Criteria for granting licences should include:
 - availability of rest facilities in a cool environment
 - monitoring of temperature and air quality
 - provision of information on the dangers posed by drugs

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- compliance with a regulatory scheme for the selection, training and management of door staff.
- Contact with the local Drug Action Team or Drug Reference Group. Local authorities were acknowledged to be best placed to attach any necessary condition in the light of local needs.

Particular emphasis was placed on reduction in the supply of drugs by searches of visitors where there is reasonable suspicion that drugs are being carried, and on the provision of first aid.

The detailed conditions reflected quite closely those set out in the London Drug Policy Forums *Dance Safely till dawn*, which is even more specific about measures such as the provision of closed circuit tv, but stresses the need for flexibility in responding to particular needs and conditions.

VII Doorkeepers

In their 1994 Report on Police, Drug Misusers and the Community, the ACMD commented:

6.5 There is a limit to the extent to which enforcement and security action can be taken to prevent drug dealing at such events. Even the most vigilant action by door staff cannot prevent drugs from being smuggled into raves, particularly as staff cannot legally conduct strip or intimate body searches, and may encourage drug taking before entering the venue. In any case, it is claimed that door and other security staff are frequently involved in the drug dealing that takes place and we comment later in this chapter on the need for regulating and training such staff.

The extent of the problem was discussed later:

6.12 Door staff are usually employed to regulate persons entering a venue and to supervise the security and behaviour of those inside. We have already referred to the part that many door and security staff are said to play in the drug trade associated with raves and other large scale music events, such as open air festivals. A survey conducted by the Home Office several years ago found significant problems in several parts of the country. This showed that around 60% of police force areas had been experiencing problems of sufficient magnitude with door supervisors to have prompted the setting up of local regulatory schemes or to plan to set up such schemes. The serious problems included incidents of violence, intimidation and, in

about 20% of cases, drug dealing.

In their report on the Private Security Industry²¹ the Home Affairs Committee noted the evidence provided by BEDA on the conduct of door supervisors: that a survey by Merseyside police had revealed that of 476 door supervisors, 279 had previous convictions including 28 for drug offences.²² ACPO reported that a local regulation scheme which involved the positive vetting and training of door supervisors combined with the power to revoke registration had led to a 50% reduction in criminal offending in its first six months²³. BEDA in their evidence²⁴ advocated a national statutory scheme of registration rather than self-regulation, because there would be insufficient participation in voluntary schemes.

The Committee's main conclusions were:

- that there should be better access to criminal records for the industry as a whole
- that no statutory controls beyond better access to criminal records were needed in most parts of the industry
- that statutory measures were necessary for the contract manned guarding sector.

In December 1995, the Home Office issued Circular 60/1995: *A registration scheme for door supervisors*. This defined a door supervisor as "a person employed on premises which have a music and dancing licence in operation with authority from the owner or landlord exclusively or mainly to decide upon the suitability of customers to be allowed on those premises; and/or to maintain order on those premises".²⁵

On 19 December 1996, the Home Office issued a consultation paper on the future of security guards, including door supervisors:²⁶ *Regulation of the contract guarding sector of the private security industry*. It proposes a licensing system to prevent people working as security guards if they have a criminal record which makes them unsuitable to carry out a job which involves contact with the public. Access to criminal record information would be made easier by the proposed establishment of a Criminal Records Agency under the current Police Bill. The proposals also include the setting up of a licensing body who would maintain a register of those licensed and the creation of new criminal offences of employing an unlicensed guard and working as an unlicensed guard. The inclusion of door supervisors would ensure that those not covered by existing schemes would become subject to criminal record checks. Approximately 20,000 were covered by a local authority scheme, but in the absence of data

²¹ 1994-95 HC 17-I

²² *ibid*, p.xxx

²³ HL 1994-95 17-II, p.101

²⁴ *ibid*, pp 182ff

²⁵ Home Office Circular 60/1995

²⁶ *Regulation of the contract guarding sector of the private security industry*

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on the likely numbers not so covered, no calculation was made of the cost of including them in a statutory scheme.

London is unique in having a statutory scheme of registration of door supervisors under part V of the London Local Authorities Act 1995 (c.x). This requires a person to be a fit and proper person, to hold a registration and to have received sufficient training. (s.34). S.39 creates the offences of employing an unregistered person and of working as a door supervisor if not registered. S.33 requires the applicant to consent to the disclosure to the council by the police of criminal convictions, other than spent convictions within the meaning of the *Rehabilitation of Offenders Act 1974*.

Appendix I

Description of the Public Entertainments Licences (Drug Misuse) Bill by Barry Legg MP²⁷

Drugs and Clubs. It is sometimes difficult to separate the two. Nightclubs have become the focal point for a dance culture which promotes drugs as a safe and acceptable form of entertainment. It takes the occasional death to break this facade of harmony. Underneath it lies a much cruder reality. Cynical dealers who deceive and exploit for profit. And countless young people exposed to illegal substances than can ruin and sometimes end lives.

Clubs that condone or promote the sale and use of drugs are an unnecessary and unpleasant feature of our nightlife. We need to be tough with them. Yet the law contains a loophole which disables the police and local authorities from taking swift action against unscrupulous clubs. Currently a Local Authority can only revoke a licence if the licensee has been convicted in a criminal court of breaching the licence. Such a conviction can take many months to secure; and is subject to appeal. In the meantime the club continues to operate as before. In one recent case in Wandsworth, a club which was overwhelmingly believed to be a locus for drug dealing and consumption - there had been several deaths - stayed open for over a year after the Council had sought its closure. The drug trade continued while the licensee spun out legal proceedings.

My Bill proposes that Local Authorities will have the power to take swift action against clubs which the police believe are strongly associated with drugs. Instead of waiting months for the licensee to be convicted, Local Authorities would be able to immediately retract the licence they originally granted to a club. If they feel a lesser sanction is required, Councils would also have the option of simply amending the conditions of the licence. The Bill does not propose any changes to the process of actual conviction of a licensee, nor to that licensee's right of appeal.

The immediate effect of the Bill would be to allow bad clubs to be closed quickly. But in wider terms, the Bill is aimed at fostering a more co-operative relationship between clubs, Local Authorities and the Police. With the ultimate sanction of suspension of licence, clubs will be forced to adopt a more responsible attitude to what goes on in their own premises. Well run clubs that have taken robust efforts to prevent drugs misuse have nothing to fear. But those clubs that flaunt the law and put young people at risk will face the consequences of their irresponsibility.

It has become acceptable to condone drug misuse. Indeed one national newspaper recently suggested that ecstasy was partly responsible for the country's booming tourist industry. I doubt that this is the case, but if it is, we should scarcely be proud of ourselves. Drugs are against the law and for good reason. This principle needs to be properly applied. My Bill seeks to give Local Authorities the power to act against clubs which promote or condone drug dealing and misuse. As such it is not only advancing the spirit of the law. It is also acting in the interests of our young people.

²⁷ House Magazine, 2.12.96

Appendix II

The dimensions of drug misuse

By its very nature, the extent of illegal drug use is hard to measure. This section summarises some of the figures available - with particular reference to young people and to ecstasy - which give some idea of the size of the problem. All of the figures refer to the United Kingdom as a whole unless stated otherwise.

The number of drug addicts notified to the Home Office in 1995 was 37,164, 16,300 more (79%) than in 1991, the earliest year for which directly comparable figures are available. Of these, 14,735 were newly notified addicts, 84% more than in 1991 and more than double the number in 1990. The number of addicts notified (doctors are required to notify addicts whom they consider to be addicted to one or other of fourteen specified drugs) is probably only a small proportion of the number of regular misusers of opiates and cocaine.

The total number of notified addicts aged under 21 rose between 1991 and 1995 from 1,755 to 4,078, an increase from 9% to 11% of the total number notified. Of the 1995 figure, 2,962 were newly notified; this was more than three times as many as the 982 newly notified addicts in 1989²⁸.

In 1995 there were 114,539 seizures by police and Customs of controlled drugs. This was the highest recorded figure ever and was 88% more than in 1990, and nearly four times the 1985 total of 30,466.

The number of seizures of ecstasy (MDMA) has been recorded since 1989 when there were 768. After a fall in 1989, there has been a steady rise in the number of seizures and there were 5,513 in 1995. Nearly all the seizures were made by the police. The amount of ecstasy seized reached a peak in 1994 when more than 1½ million doses were seized. The comparable figure for 1995 was 555,000²⁹. In about two thirds of police forces, principally rural forces in England, ecstasy is the most frequently seized class A drug.

²⁸ Statistics of drug addicts notified to the Home Office, United Kingdom, 1995 (Home Office Statistical Bulletin 15/96) Tables 1, 6

²⁹ Statistics of drug seizures and offenders dealt with, United Kingdom, 1995 (Home Office Statistical Bulletin 25/96) Tables 1.1, 2.4

There were 93,631 known drugs offenders³⁰ in 1995, more than double the number (44,922) in 1990. Six per cent of offenders in 1995 were aged under 17 and a further 29 per cent aged between 17 and 20. 3,281 people in 1995 were concerned with offences involving ecstasy, more than double the number in 1993 and more than eleven times the total in 1990³¹.

It is thought that, in any one year, at least six per cent of the population (some three million people) will use an illegal drug, most often cannabis³². Based on survey data from England and Wales, it is estimated that cannabis has been tried at some point in their lives by just over a third of people aged 16 to 29 and by 15% of the 30-59 age group. Equivalent figures for used in the last month are 12 and two per cent respectively. About six per cent of 16 to 29 year olds have ever used ecstasy with only one per cent having used it in the last month. Of those aged between 16 and 59, it is estimated that between 620,000 and 850,000 have ever tried ecstasy with between 83,000 and 121,000 using it in the last month.

A survey of young people's experience of a wide range of drugs (from solvents and cannabis through to heroin) suggests that, in 1987, 8% of boys and 6% of girls aged 15-16 had used one or more drugs. In 1995 the figures were 39% and 34% respectively. In 1987, 2% of boys and 1% of girls aged 12-13 had used one or more drugs; in 1995 the figures were 9% and 8% respectively. Cannabis was by far the most common drug experienced with ecstasy having been used by fewer than one per cent of 12-13 year olds and of 5% of 15-16 year old boys and 3% of girls. 12 or 13 per cent of the latter age group had, however, been offered ecstasy³³.

In 1994 there were 1,620 drug-related deaths in the United Kingdom. Of these, about 490 were attributed to drug dependence or non-dependent abuse of drugs (other than tobacco or alcohol). A further 440 deaths resulted from accidental poisoning by controlled drugs and 240 involved poisoning by controlled drugs where it was undetermined whether the drugs had been accidentally or purposely taken. In addition, some 330 people committed suicide with the aid of controlled drugs and 110 people who were injecting drug users died from AIDS. 29 deaths in 1994 were reported to have involved ecstasy. Ten of these were attributed to drug dependence or non-dependent abuse of drugs (of these, one was aged under 20 and six between 20 and 24) and nineteen to accidental poisoning (of whom six were aged under 20 and seven between 20 and 24)³⁴.

³⁰ Persons found guilty, cautioned or dealt with by compounding

³¹ *ibid.* Tables 3.4, 3.12

³² ISDD **Drug misuse in Britain 1994** page 5; Malcolm Ramsay and Andrew Percy **Drug misuse declared: results of the 1994 British Crime Survey** (Home Office Research Study 151) page x, Table 4.5

³³ John Balding **Young people and illegal drugs in 1996** (University of Exeter 1996) page 10

³⁴ Home Office Bulletin 15/96 *op cit* Tables 16, 17, 19

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