

# TIME TO CALL TIME

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**"It is not the multitude of ale-houses, to give the most suspicious example, that occasions a general disposition to drunkenness among the common people; but that disposition arising from other causes necessarily gives employment to a multitude of ale-houses."**

*Adam Smith, The Wealth of Nations Book II, Chapter V*

# 1. Introduction

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For nearly five centuries governments have attempted to control the abuses of alcohol through a wide and complex range of restrictions on its availability for sale to the general public. The evidence for their effectiveness, however, is far from clear.

While severe measures, such as those imposed during the First World War, undoubtedly achieved their purpose, reducing both drunkenness and its associated evils, they were only able to do so at the cost of serious restrictions on the freedom of the general public and of the brewers and distillers who serve them.

Excluding such untypical periods of severe wartime restriction, changes in the licensing laws in Britain have generally been slow and imperceptible, making their effects difficult to separate from other changes taking place in society, and hence difficult to quantify. It is only since the liberalisation of the liquor laws in Scotland, nearly a decade ago, that some serious comparisons have become possible between the consequences of maintaining the status quo and those arising from giving people greater freedom.

Limited in scope though it was, there can be few who would contest the success of the Scottish experiment. By almost every measure, drink related problems have diminished in importance compared with England and Wales. Indeed, in the light of the evidence, the Scottish Office has now indicated that it is prepared to consider proposals for further reform.

In curious contrast, the Home Secretary remains to be convinced that corresponding changes in England and Wales would prove beneficial. Commenting on the Scottish experience, he stated, "I shall want to consider it, and public reaction to it, carefully — bearing in mind continuing public concern about the misuse of alcohol — before reaching a decision on—whether the law in England and Wales might be changed on similar lines so as to allow more flexibility in opening hours."<sup>1</sup>

His caution is difficult to understand. It is thirteen years since the Erroll and Clayson Committees recommended more liberal licensing laws. It is ten years since those changes were first introduced in Scotland. In practice they have clearly fulfilled the hopes of their authors. It seems surprising, therefore, that a government prepared to grasp the nettle of our antiquated Sunday trading laws should still be unwilling to deal with our equally out of date, and far less defensible, liquor licensing laws.

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<sup>1</sup> House of Commons written answer ( Hansard: 4<sup>th</sup> February 1986 Col. 102)

## 2. Historical Background

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"For as much as intolerable hurts and troubles to the commonwealth of this realm doth daily grow and increase through such abuses and disorders as are had and used in common ale-houses and other places called tippling houses..."<sup>2</sup>

State control over the sale of alcohol in Britain dates back to legislation, introduced in England in 1495, to deal with the troubles then being caused, particularly in the towns, by former soldiers and others displaced during the Wars of the Roses, who frequented ale-houses and led a life based on violence and crime. Among other provisions, it gave the justices of the peace power to "put away common ale-selling in towns and places where they should think convenient and to take sureties of keepers of ale-houses in their good behaviour."

It was not until 1551, however, that a system of licensing of places selling beers was first introduced. The Act of that year prohibited anyone from operating a common ale-house without obtaining the permission of the justices. Offenders faced trial and punishment at the quarter sessions. In granting licences, the justices were empowered to take bonds and sureties from the landlord and to impose any conditions they thought fit.

As a result, a wide variety of rules and regulations came to be imposed, some of them on a county wide basis and most destined in due course to become enshrined in statute. Restricted opening hours, Sunday closing except for travellers, prohibition of certain kinds of games, and bans on people of bad character all featured in one part of the country or another.

In the early seventeenth century, attempts were made in a series of Acts to introduce some degree of uniformity across the country through tighter, nationally applied regulations.

### **Spirits appear**

A century later further changes were introduced to deal with the arrival of spirits. The introduction of brandy from France, gin from the Netherlands and whiskey from Ireland had led to the rapid growth of home production and the equally rapid spread of bars specialising in the sale of spirits.<sup>3</sup> The law was amended to bring these spirit bars under the same system of control as ale-houses. Other efforts to restrict consumption, made through the imposition of high taxes, only succeeded in encouraging the growth of unlicensed and hence untaxed outlets and had eventually to be abandoned.

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<sup>2</sup> From the preamble to the 1551 Ale-houses Act

<sup>3</sup> A survey of London carried out by William Maitland, FRS in 1732 revealed that one house in six was licensed. In all, there were 15,288 houses licensed to sell beers or spirits for every fifty inhabitants.

Licensing was not introduced into Scotland until after the Union with England; the first Act, in 1755, extending north of the border the system that had been developing over two and a half centuries in England.

By the end of the eighteenth century almost all the principal features of liquor licensing, as it is known today, had already emerged. No one was allowed to sell alcohol for consumption on the premises unless they had been granted a licence. Licences were granted annually by the justices of the peace and restrictions were imposed on the holder, principally as to the hours he could open for business but also on a variety of other matters.

### **Continuing controls**

A major tightening of licensing laws took place during the First World War in an attempt to reduce drinking and concentrate effort on war production. Under the Defence of the Realm (Liquor Control) Regulations, 1915, opening was restricted to five hours a day during the week with no Sunday opening. Off-sales were limited to two hours a day. The strength of spirit was reduced by 10% and total production was reduced under a system of central control.

As is all too often the case, control once gained was not willingly relinquished. Significant elements of these "temporary" wartime restrictions were continued in modified form in the 1921 Licensing Acts and persist to this day.

Despite frequent minor amendment, some of it tending towards a limited degree of liberalisation, licensing laws in England have not materially changed since 1921. Even in Scotland, where significant reforms were introduced in the 1976 Licensing (Scotland) Act, the basic features of the system remain largely unaltered.

### 3. Reform Movement

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In the period since the First World War, licensing laws have been frequently reformed in minor ways but seldom seriously reviewed. A Royal Commission examined those in England and Wales between 1929 and 1931 but reached divided conclusions with no fewer than three minority reports and six notes of reservation. The parallel Commission for Scotland fared rather better, producing only one minority report and two notes of reservation. Neither report led to legislation.<sup>4</sup>

More successful was the Guest Committee which reviewed licensing laws in Scotland and produced two reports, the first in 1960 and the second in 1963.<sup>5</sup> Many of the recommendations in its first report were incorporated in the Licensing (Scotland) Act, 1962. Its second report, however, joined those of its predecessors on the shelf, put there by politicians anxious to avoid the controversy which always arises when a more liberal approach to moral questions is proposed.

In April 1969, the Monopolies Commission, as it then was, issued a report on the supply of beer<sup>6</sup> which concluded that the combination of the tied house system and the restrictions on competition imposed through the licensing laws acted against the public interest. It recommended a substantial relaxation of those laws with the aim of allowing anyone to sell alcoholic drinks whose character and premises met certain minimum standards.

As a result of that report, two parallel committees were set up to review the licensing laws; one, under the Chairmanship of Lord Erroll of Hale, to deal with England and Wales, and the other, under Dr. Christopher Clayson, to deal with Scotland.

The two committees maintained close contact during their work and both produced proposals for a modest degree of liberalisation. Neither was prepared to adopt the radical recommendations of the Monopolies Commission but opted instead for significant, rather than substantial, reform.<sup>7</sup>

#### Scotland alone

While no government has yet been willing to introduce even modest reform into the licensing laws in England and Wales, most of the changes proposed by the Clayson Committee were introduced into Scotland in the 1976 Licensing (Scotland) Act.

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<sup>4</sup> Report of the Royal Commission on Licensing (Scotland) (Edinburgh: HMSO Cmnd. 3894 1932)  
Report of the Royal Commission on Licensing (England and Wales) (London: HMSO Cmnd. 3988 1932)

<sup>5</sup> First and Second Reports of the Committee on Scottish Licensing Law (Edinburgh: HMSO Cmnd. 1217 1960 and Cmnd. 2021 1963)

<sup>6</sup> A Report of the Supply of Beer (London: HMSO 1969)

<sup>7</sup> Report of the Departmental Committee on Liquor Licensing (London: HMSO Cmnd. 5154 1972)  
Report of the Departmental Committee on Scottish Licensing Law (Edinburgh: HMSO Cmnd. 5354 1973)



As a result, important changes were made in the way drinking was permitted and organised in Scotland. Control over licensing was removed from the justices of the peace and given to new boards made up entirely of councillors. A wider variety was created in the types of licences which could be granted, and changes were made in the complex procedures under which they were granted.

The major reform, however, was in the hours during which licensed premises were allowed to open. Previously, opening had been restricted to the hours between 11.00 a.m. and 2.30 p.m., and 5.00 p.m. and 10.00 p.m. Now, basic hours were extended by the addition of an extra hour at the end of the evening and the new licensing boards were given power to permit further additional hours as they thought fit. In effect, 11.00 a.m. to 11.00 p.m. became the norm with further extensions quite common. With ingenuity and a willingness to travel around either Edinburgh or Glasgow, it is now possible to drink continuously between 6.00 a.m. and 4.00 a.m. the following morning.

Further changes affected Sunday opening. Prior to 1962 hotels were only permitted to open on Sundays to supply drinks to *bona fide* travellers', a rule that did more to encourage drunken driving than any other single cause. Changes introduced in 1962 allowed them to open on Sundays for all customers. Throughout, public houses were obliged to close. Under the 1976 reforms public houses could apply for permission to open on Sundays and most have done so. Nonetheless, the archaic distinction between them and hotels has been retained with the right to seek permission for extended hours on a Sunday confined to the latter.

From a position where its laws were far more restrictive Scotland moved ten years ago to a position significantly more liberal than that prevailing in England and Wales.

## 4. The Present Position

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Under the 1964 Licensing Act, anyone in England and Wales wishing to sell alcoholic drinks must obtain an annual licence to do so from the Licensing Justices.<sup>8</sup>

There are three basic tests to be satisfied for an application to succeed. The applicant must be "a fit and proper person", the premises must be "suitable and convenient" and there must be a need or a demand for new licensed premises in the area. Where applications are refused, there is a right of appeal to the courts.

The first two requirements raise little real difficulty although there are occasional cases of unfairness where, for example, "fit and proper" is interpreted to bar an immigrant grocer from obtaining a licence where he did not speak English or where the standards offered were considered to make premises unsuitable. In neither of such cases does there appear to be any necessity for the justices to decide the customers' wishes for them. If inability to communicate is a problem or the standard of the premises is unacceptable they will take their custom elsewhere.

Regarding the third test, there is no uniformity of approach. Increasingly, the view is being taken that it is not appropriate for the licensing system to be used as a substitute for market forces or for it to operate to protect existing licensed premises from possible competition. Nonetheless, there are still many areas where a more restrictive approach is taken.

Over the years, there have been significant shifts in the pattern of licences as the figures in table 1 show.

Table 1                      Licensed premises in Great Britain

	England and Wales		Scotland	
	On-sale	Off-sale	On-sale	Off-sale
1921	82,054	22,108	6,048	2,944
1931	76,886	22,105	5,836	2,637
1941	73,210	21,756	5,634	2,281
1951	73,421	23,669	5,909	2,380
1961	68,936	23,934	6,262	2,782
1971	64,087	28,166	7,441	3,819
1980*	67,091	37,252	9,043	4,940
1983	69,136	40,853	n/a	n/a

**Sources:** Home Office Liquor Licensing Statistics Civil Judicial Statistics, Scotland

(\*) 1980 figures are the last to be published for Scotland.  
1981 figures were not collected for England and Wales.

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<sup>8</sup> Two curious exceptions are the University of Cambridge and the Freedom of the Company of Vintners, both of whom enjoy a restricted right to sell wine without licence.

## **The system**

Licences are of two basic types, on-sales and off-sale, but they can vary considerably through the imposition of a wide variety of conditions. Sale of all types of alcoholic drink might be permitted, or it might be restricted to beer, cider and wine. Premises might have a licence for six days only or for the entire week. There may be early closing conditions or seasonal limitations.

Special licensing arrangements apply to seamen's canteens, some theatres and "late night refreshment houses" where the district or borough council is responsible.

Once granted, a licence leaves the holder subject to restrictions in the hours during which they can sell alcohol. In general, on weekdays, premises may open between 11 a.m. and 10.30 p.m. with a break in the afternoon of two and a half hours beginning at 3.00 p.m. In London and some other areas, closing time is half an hour later at 11.00 p.m. There is, in addition, power to modify the permitted hours provided the total hours do not exceed 9 (or nine and a half in later closing areas)

On Sundays and certain religious holidays opening hours are restricted to 12 noon to 2.00 p.m. and 7.00 p.m. to 10.30 p.m. In Wales, there is no Sunday opening unless it has been agreed to in a local poll.

There are powers to allow additional hours for restaurants and clubs serving meals and for dance halls and premises offering musical or other entertainment where the provision of drink is incidental.

Up to 1976, the law in Scotland followed broadly the same lines as elsewhere in Great Britain although opening hours were significantly more restricted. While the reforms introduced in that year transferred licensing from the justices of the peace to the local authority and led to a substantially more liberal approach to opening hours, they did not make major changes in the basic system, itself.

No one is allowed to sell alcoholic drinks unless they have been granted a licence by the new licensing boards and a licence may be refused on much the same grounds as in England and Wales. Any such refusal is subject to an appeal to the courts.

Apart from extending opening hours, the new law in Scotland allows voluntary organisations to be granted occasional permissions to sell drink at their functions and provides for the granting of a new refreshment licence to premises where children are allowed provided they are accompanied by an adult.

## **Persistent planning**

An odd survival of the post war era is the provision under which, in England and Wales, a licensing planning committee can be constituted by the Secretary of State with the duty to "review the circumstances of its area and to try to secure, after such consultation and negotiation as it may think desirable, and by the exercise of the powers conferred on it, that the number, nature and distribution of licensed premises in the area, the accommodation provided in them and the facilities given in them for

obtaining food, accord with local requirements, regard being had in particular to any redevelopment or proposed redevelopment of the area."<sup>9</sup>

Such committees, made up of justices and local councillors, exist principally in London and in the new towns.

They owe their origin to the conditions in badly war-damaged areas where it was deemed desirable to co-ordinate the work of the planning authorities with the decisions of the licensing justices. Thirteen years ago, the Erroll Committee recommended that they be abolished. Why it should still be felt that either councillors or justices, or indeed both acting together, should be particularly competent to make decisions in place of the licensing trade responding to its own perception of public demand is far from clear.

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<sup>9</sup> Halesbury's Laws of England (Vol.26 p.129)

## 5. The Consequences of Change

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In its report, the Erroll Committee lamented the "lack of previous research into the effects of past changes in the liquor licensing laws. "It was obvious, they said, that "for whatever reasons, it has not hitherto been thought necessary to conduct research specifically aimed at establishing the direct consequences of changes in liquor licensing legislation."<sup>10</sup>

In the case of the modest liberalisation of Scotland's licensing laws that complaint cannot be made. Several surveys have examined the consequences and considerable debate has centred on their findings.

Dr. Clayson, the architect of the Scottish reforms, is in no doubt that they have had beneficial effects. Prior to 1976, he points out, "in every index for studying the misuse of alcohol the Scots were worse than the English. Personal or family drink problems, breaches of the peace, drunkenness, and drunk driving were all two or three times as bad in Scotland. So were admissions to psychiatric hospitals for the treatment of alcohol related disorders, and so also were deaths from cirrhosis of the liver."<sup>11</sup>

All this, he pointed out, occurred despite the fact that both countries shared the same language, traditions and culture. Each enjoyed the similar levels of income, spent almost the same on drink, had as many teetotallers and as many heavy drinkers, paid the same taxes on alcohol, and were "affronted by the same witless advertisements."

### Critics Confounded

The widespread expectation that longer permitted hours would lead to increased drinking has not been borne out in practice. Weekly family expenditure on alcohol in Scotland is now below than the UK average. Before the reforms it was above it.

In 1974, the average Scottish family spent £2.46 on drink compared with the UK average of £2.21, a gap of 11%. Following the changes in licensing laws, the gap began to narrow and by 1982 the pattern had been reversed. By 1983, the average Scottish family was now spending £6.43, 7% below the UK average of £6.91. Indeed, Scots households now spend less as a proportion of their income on alcohol than the UK average, lower than in all other areas except East Anglia, the South West and Northern Ireland.<sup>12</sup>

A survey undertaken by the Social Surveys Division of the Office of Population Censuses and Surveys before and after the changes were first introduced showed that the public had not increased the amount they spend on drink but had reduced the rate of consumption slightly. Again, where previously there had been a rush to fit in last

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<sup>10</sup> Report of the Departmental Committee on Liquor Licensing (London: HMSO Cmnd. 5154 1972) Page 15: para.4)

<sup>11</sup> Clayson, C: The Scottish Experience included in Licensing Law and Health (London: Action on Alcohol Abuse 1984)

<sup>12</sup> Regional Trends 1985 (London: HMSO 1985)

rounds of drinks as closing time approached, this was much less evident with closing an hour later. "The survey of licensed premises showed a significant reduction in the pattern of acceleration in drinking towards the end of the evening. Thus although the 'beat the clock' attitude to drinking has not disappeared it has at least diminished."<sup>13</sup>

Further survey work two years later confirmed these findings and also indicated that, for some people at least, the pattern of drinking had shifted to a later point in the evening.<sup>14</sup> A similar shift in the pattern of daytime drinking was revealed in another, more limited, survey of 19 public houses in Glasgow where all day drinking had been permitted.<sup>15</sup>

More recent survey work carried out by the Office of Population Censuses and Surveys has gone further to confirm the beneficial effects of the reforms.<sup>16</sup> While there has been an increase in total alcohol consumption, this is almost entirely attributable to a rise in consumption by women. For men, with presumably already established patterns of drinking, the increase is only a little over 1%. The survey concluded "since consumption by men did not rise between 1976 and 1984 it seems unlikely that the increase in women's drinking is a direct consequence of the changes in licensing legislation, but rather that it results from a change in Scotland to a more relaxed attitude towards drinking in general, and in particular towards women's drinking. It is perhaps because of this more relaxed approach to drinking that more women now drink in public houses, and that the extensions to licensing hours brought about by the 1976 Act tend to be seen as having led to more sensible drinking, rather than as offering a temptation for people to drink more."

### **Fewer offences**

A further effect of the Scottish reforms has been the production of a marked improvement in behaviour compared with England and Wales. There has been virtually no change in the number of breaches of the peace before and after the introduction of more liberal opening hours. Drunk driving convictions increased in Scotland by only 1.2% compared with 36% in England and Wales. Violence against the person increased by 16.7% compared with 43.8%

Significantly, since part of the reforms were aimed at creating a climate in which children could accompany their parents, convictions for under age drinking have fallen by 18.6% in the four years following reform compared with a rise of over 23% in England and Wales.

Convictions for drunkenness alone actually fell by 13.6% in the five years following the change compared with a rise of 13.1% in England and Wales. In the 19 to 26 age group the decline was 14.1% compared with a rise of 19.2% in England and Wales. As table 2 shows, that marked decline has continued.

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<sup>13</sup> Bruce D: Changes in Scottish Drinking Habits and Behaviour Health Bulletin 37, 1978

<sup>14</sup> Knight I and Wilson P Scottish Licensing Law (London HMSO 1980)

<sup>15</sup> Davies J and Fisher S All Day Licences: Interviews and Observations — A paper prepared for Strathclyde Regional Council Social Work Department (July 1980)

<sup>16</sup> OPCS Monitor SS 85/2 (London: Office of Population Censuses & Surveys 1985)

Table 2 People proceeded against in Scotland for being drunk and disorderly and for habitual drunkenness

Year	Number
1980	13,950
1981	10,991
1982	9,388
1983	7,928
1984	6,581

Source: Hansard: 21st. May 1985 (Written answer: Col. 411) The Medical Case

Considerable play is made by those opposed to liberalisation of the licensing laws of the fact that the incidence of cirrhosis of the liver has continued to increase, despite the changes.<sup>17</sup> One recent contribution to the British Medical Journal, for example, pointed out that deaths due to alcohol, particularly cirrhosis, had not declined whereas admissions to hospital for psychiatric treatment related to alcohol had fallen. It went on to suggest that, in relation to health, the effect of the changes in Scotland's licensing laws had, therefore, been "neutral".<sup>18</sup>

In fact, of course, cirrhosis of the liver is a slow developing disease, brought about by extreme abuse over a prolonged period of time. Any improvement in drinking behaviour is unlikely to be reflected in the statistics for alcohol related deaths for many years after the event. As Dr. Clayson himself has pointed out, "where the misuse of alcohol has been so severe as to cause cirrhosis of the liver, or so addictive as to require admission to hospital, no changes in licensing law will have any effect."<sup>19</sup>

A study by Dr. John Eagles and Dr. John Besson, published in the British Journal of Psychiatry showed that there had been a dramatic drop in the number of men admitted to general hospitals in Grampian Region with alcohol related problems following the introduction of extended opening hours. From a peak of 389 admissions in 1978, numbers had fallen steadily and dramatically by over a quarter in four years. Dr. Eagles has been quoted as saying that "only if there was another excessive clampdown could we expect the reversal of the trend shown between 1978 and 1982."<sup>20</sup>

Significantly, in the Duffy and Plant study, it is shown that, over Scotland as a whole, the risk relative to England and Wales of having to enter psychiatric hospital due to alcohol abuse has dropped by nearly half since the more liberal licensing laws were introduced.

<sup>17</sup> See, for example, Sanders, B : Licensing Law Debate in AAA Review, Vol.2 No.4 July / August 1985

<sup>18</sup> Duffy, JC and Plant MA Scotland's liquor licensing changes: an assessment in British Medical Journal Vol 292 4<sup>th</sup> January 1986

<sup>19</sup> Clayson C: The Scottish Experience included in Licensing Law and Health (London: Action on Alcohol Abuse 1984)

<sup>20</sup> Aberdeen Press and Journal 6<sup>th</sup> November 1985

## Poor Scots

It is argued by some that the reason for these improvements lies in a drop in living standards in Scotland due to the economic recession. It is an argument that does not stand up to even the most superficial examination. As table 3 shows, Scotland has been affected less severely by the recession than the rest of the United Kingdom.

Table 3 Key economic indicators

	1976	1984	%age change
Unemployment (Scotland)	148,300	335,500	126
Unemployment (GB)	1,301,600	3,104,600	139
Personal income (Scotland)	1,275	4,367	243
Personal income (UK)	1,354	4,583	238

Source: Regional Trends 1985

Nor can it be argued that Scotland is significantly worse off than the rest of the Country. Average male manual earnings are 2.3% above the rest of United Kingdom. It receives 5.6% more in government benefits per head than the U.K. average. Its Gross Domestic Product, related to its population, is the third highest among the regions of the U.K. Its population is better educated and better trained than the average for the country. Indeed, it did not even appear in a recent list of the fifty poorest regions of the E.E.C., although eight other parts of the U.K. were listed.<sup>21</sup>

It is, of course, true that there is a clear division in Scotland between the relatively depressed west, centred on Glasgow, and the rest of the country. To an extent, this is reflected in the figures. The decline in drink related offences shown in table 3 is 53%. Within the less prosperous Strathclyde area it is 60%.

But in the allegedly better off England and Wales the decline has been under 10%.

## Public popularity

The changes have obviously appealed to both the public and the trade. A System Three survey reported in the *Glasgow Herald*<sup>22</sup> showed that 66% of the public and 85% of the trade thought extending opening hours had either made things better or had made no difference. 63% of the public and 54% of the trade thought the longer hours were about right. A majority of the general public thought drunkenness was no worse or had declined while 69% of the trade thought there was less drunkenness now. 51% of the public and 84% of the trade thought pubs had improved since the changes with only 7% of the public and 5% of the trade thinking they were worse.

The 1984 survey by the Office of Population Censuses and Surveys confirmed these findings. 73% of those interviewed thought the present licensing laws were an improvement on the old.<sup>23</sup>

<sup>21</sup> Official Journal of the European Communities (23/12/85) Written Question No. 1053/85

<sup>22</sup> Glasgow Herald 21<sup>st</sup> and 22<sup>nd</sup> March 1985

<sup>23</sup> OPCS Monitor SS 85/2 (London: Office of Population Censuses & Surveys 1985)



## 6. Whither Licensing?

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If relaxing the controls over the availability of alcoholic drinks does not lead to any increase in the amount consumed, but results instead in reduced abuse and improved standards of behaviour then the justification for retaining a licensing system such as we have must be seriously examined.

Certainly, the historic reasons for introducing controls over the sale of alcoholic drinks have no relevance today. The troubles following the Wars of the Roses or, in Scotland, "the '45" have no parallel in present day Britain. Equally, the special demands of a war economy have no counterpart in peacetime.

Today, different arguments have been devised to justify retaining licensing restrictions in modern society. They have been summed up by Professor Alwyn Smith of the Department of Epidemiology and Social Research at the University Hospital of South Manchester, Vice-Chairman of Action of Alcohol Abuse, as:

"To proclaim the special attitude that society adopts towards alcohol as a commodity. To restrain levels of consumption by restricting availability. To protect the vulnerable the young and those already drunk. To permit the control of sites and hours of sale so as to match determined social 'needs'."<sup>24</sup>

The first objective is a simple piece of collectivist nonsense. Society is the summation of its individual members. In so far as they hold any special attitude towards drinking then, in a free society, they are perfectly entitled to demonstrate it in their own lives. To misuse the machinery of the state to impose those views, albeit imperfectly, on others who do not share them is to deny individual freedom of choice. As prohibition in America showed, demand that cannot be met legally is all too likely to be satisfied illegally, creating greater problems than those the restrictions were intended to solve.

The second objective is one which the available evidence suggests is unattainable, except through the use of severe restrictions of a kind that would be unacceptable in peacetime. Regulations such as were applied during the First World War, which included both reduced production and lowered alcohol content, certainly reduced consumption. But that reduction did not outlast their removal. Without such drastic measures, maintaining existing availability as in England and Wales or extending it as in Scotland does not seem to have had any significant effect on the total amount of alcohol consumed, only on the rate of consumption.

As Dr. Clayson has pointed out, over-restriction may lead to greater alcohol abuse. When Scotland's licensing laws were more restrictive than England's, "this led to the more rapid consumption of the same amount of alcohol, increased social pressures to

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<sup>24</sup> Smith A: Introductory Remarks included in Licensing Law and Health (London: Action on Alcohol Abuse 1984)

drink and also to drinking in bouts, especially on Saturdays, since pubs were not open on Sundays. Mixing of drinks for more potent alcohol effect became a habit."<sup>25</sup>

So far as the protection of the young or the drunk is concerned, there seems little need for the complex paraphernalia of licensing laws when all that is required is a legal ban on such sales with appropriate penalties for failure to comply with the law.

### **Need versus demand**

The fourth objective, like the first, arises from a collectivist view of society. The very concept of "need" defies objective definition and any suggestion that supply should or can be determined on the basis of it involves replacing the aggregate demand of individuals, acting independently, with the value judgement of some person or group put in a position of arbitrary authority.

Even were it possible to measure "social need", which it quite obviously is not, there is no reason whatsoever to suppose that justices of the peace or, in Scotland, local councillors would be better able to determine its scale and nature than anyone else. No individual, except by the luckiest and unlikeliest of chances, can ever hope to achieve by calculation what the market place does automatically. Many, to their credit, have chosen not to attempt to do so and have been content to grant licences as applied for, leaving the customers to determine the final pattern of provision.

Such common sense has not, however, been universally evident. Nor has it prevented advocates of licensing control from suggesting yet more ways of attempting to impose their opinions in place of the market. One proposal being widely canvassed among those concerned with alcohol abuse is the idea of a "licensing forum" in which the police, road officials, the licensing trade, alcohol agencies, community physicians and social workers would get together and consider such matters as the right number of licensed premises, the right balance between types of premises and other licensing or drink problems.<sup>26</sup>

A better way of ensuring a total mismatch between supply and demand would be very hard to imagine.

### **The Road to Real Reform**

The Erroll Committee took the view that "very considerable changes would be required in order to make any significant impact over and above the environmental factors which determine the national level of consumption."<sup>27</sup> The Scottish experience has shown that this was not in fact the case.

A decade of experience of significant, but by no means "very considerable", liberalisation has not produced the unfortunate side effects forecast by its opponents. On the contrary, problems associated with alcohol abuse have begun to decline in

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<sup>25</sup> Clayson C: The Scottish Experience included in Licensing Law and Health (London: Action on Alcohol Abuse 1984)

<sup>26</sup> Tether P: Liquor licensing, it's role in a local prevention strategy included in Licensing Law and Health (London: Action on Alcohol Abuse 1984)

<sup>27</sup> Report of the Departmental Committee on Liquor Licensing (London: HMSO Cmnd. 5154 1972) (Page 46 para.3.31)

Scotland, compared with England and Wales. In the light of that evidence, there should now be little objection, as a first step at least, to implementing in England and Wales the similar reforms proposed over thirteen years ago by the Erroll Committee.

Their principal recommendations regarding licensing and opening hours are outlined in appendices A and B but, so far as the general public is concerned, the important proposal was that opening hours should be extended to cover the period between 10.00 a.m. and 12.00 midnight with the licensing justices having powers to extend or, in a limited way, to reduce them. There can be little doubt that such liberalisation would be widely welcomed by the public and the licensed trade and could well produce the same beneficial side effects observed in Scotland.

If the modest reforms proposed by the Erroll Committee are all that the government is prepared to contemplate for England and Wales, then at least some limited tidying up of the irrational features that still persist in the Scottish legislation could usefully take place, too.

The principal areas where further reform is needed are in the quite artificial distinction that is made between hotels and public houses and the services they are consequently permitted to provide their customers, the curious restrictions still contained within the liberalised opening hours and the ban on off-sales on a Sunday. A fuller list of changes that could be included in such a reform measure are outlined in appendix C.

### **Bureaucracy retained**

Unfortunately, however, implementing the Erroll Committee recommendations would do as little to improve the operation of the licensing system as the Scottish reforms did. They would remove some of the quite unnecessary controls that currently exist over people's social lives but they would leave largely untouched the needless bureaucracy and multiplication of controls that restrict the licensing trade in the opening and operation of licensed premises.

It would still be necessary, as it is for anyone wishing to open any other form of public premises, to obtain planning permission from the local council, to meet the building regulations, and to satisfy the requirements of the police, fire, and environmental health authorities. But the intending publican would additionally have to obtain a certificate from the local authority or authorities that these requirements had been met.

And he would then have to obtain a licence from the justices who would take into account those and further factors such as whether or not the premises were "suitable and convenient for the sale of intoxicating liquor, having regard to their location, their character and condition, the nature and extent of the proposed use and the persons resorting or likely to resort" to them and whether or not "the use of the premises....has caused or is likely to cause a public nuisance or a threat to public order or public safety."<sup>28</sup>

Another example of the quite unnecessarily detailed nature of some of the licensing requirements is given by the provisions governing the granting of special hours

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<sup>28</sup> Report of the Departmental Committee on Liquor Licensing (London: HMSO Cmnd. 5154 1972) (Page 273 para.32(g))

certificates in England and Wales. The justices have to be satisfied that the premises hold a music and dancing licence, that the whole or part of the premises is structurally adapted and *bona-fide* intended to be used for the purpose of providing for patrons music, dancing and substantial refreshment to which the sale of alcohol is ancillary before granting the licence.

Such pointless duplication and triplication of controls serves only to create a climate in which paperwork takes the place of common sense, requiring licensees to spend an inordinate amount of time on wasteful bureaucracy, rather than getting on with running their businesses.

If licensing is to be retained, there seems no good reason for retaining anything like the present degree of legal complexity.

## 7. The Rational Approach

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Among official investigations, only the Monopolies Commission has been willing to challenge the ingrained assumptions that have developed over five centuries of liquor control. Its 1969 report<sup>29</sup> pointed the way towards radical reform in suggesting a change to a system in which anyone would be allowed to sell alcoholic drinks whose character and premises met certain minimum standards.

Their argument led to the appointment of the Clayson and Erroll Committees but, a decade and a half ago, neither they nor the government were willing to consider such a major change. Today, with the pressure for reform now building up again it is time to accord that radical option the attention it seriously deserves.

That argument is reinforced by the fact that the existing licensing system directly conflicts with the principles of a free society, denying people the right to make choices for themselves regarding their own leisure time and restricting the rights of those who wish to cater for that leisure. In practice, licensing controls have proved to be counterproductive, worsening social and medical problems rather than improving them. And their concrete objectives of protecting the young and those who have already drunk too much can all be achieved in simpler, more direct ways.

The licensed trade is far from unique in requiring prior approval from some state appointed body before anyone can set up in business. With the avowed intention of protecting the public, a number of occupations enjoy the protection provided by such legal barriers to entry. Even the present government has, perhaps inadvertantly, helped widen the range significantly to include such notorious trades as boat hiring, secondhand book dealing or window cleaning!<sup>30</sup>

The antiquity of such requirements in the case of the licensed trade should not however, render them immune to question. It is too readily assumed that such control is essential because alcohol differs in some fundamental way from other commodities.

### A Simpler System

The basic requirements of any system of control over the sale of alcohol do not differ in any fundamental way from those needed in any other kind of retail trade. The person in charge of the business must operate it in accordance with the law of the land, the premises must satisfy any conditions imposed by legislation, and no nuisance must be caused.

Traditionally, such similarities have been ignored and a totally different method of achieving compliance with the law has been created through the licensing system. There are three basic areas over which licensing controls operate; the people who sell

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<sup>29</sup> A Report on the Supply of Beer (London: HMSO 1969)

<sup>30</sup> The 1982 Civic Government (Scotland) Act gives Scottish councils the power to licence a wide range of activities.

alcoholic drinks, the premises from or in which they do so, and the hours during which they are allowed to open for business.

### **Personal licenses**

The present system grants a licence to an individual in connection with the premises to be used. If they move to other premises they require to obtain a new licence, either by transfer of an existing licence on those premises from the previous holder or by a completely fresh grant. Anyone proposing to take over the premises vacated has to do the same.

As part of the process, the licensing authority must decide both whether or not the individual is "a fit and proper person" to hold the licence sought and whether or not the premises are suitable and convenient and likely to cause a public nuisance.

Such a combination of two quite different judgements makes little sense. A person cannot be fit and proper in one location and not in another just as premises will be suitable or unsuitable irrespective of the name of their proprietor. Recognising this, the Erroll Committee made the sensible suggestion that the two decisions be separated, with applicants for a licence being awarded one in their own right which would be valid for any premises from which they chose to operate.

### **Fit and proper**

The actual decision as to whether or not someone is a "fit and proper person" is generally made on the basis of a police report which, principally, relates to any criminal record they may have and to their previous experience of the licensed trade. Not all applications, however, are opposed on the grounds of previous convictions. As already noted, there have been cases where an applicant's inability to speak English has been put forward as a reason for regarding them as not being "fit and proper."

If it is felt necessary to retain such controls over entry to the licensed trade, and the lack of similar restriction in other areas of catering suggest it is not, then the system should at least be streamlined. There seems little necessity for a police recommendation to have to be rubber stamped by a committee when it would be simpler for the police to issue licences themselves, as they do for shotguns, with anyone refused one having the right of appeal to the courts.

If it is felt that the police cannot, or should not, be expected to undertake this administrative task then it would be better to adopt a common practice throughout the United Kingdom and hand the responsibility over to the local authorities.

Whether or not such changes are acceptable, there is a strong case for specifying the grounds on which any personal licence may be refused, in much the same way that the 1976 reforms in Scotland laid down the four specific grounds on which applications for traditional licences can be refused.

The Erroll Committee recommended that applicants for licences should undergo a period of approved training before being considered "fit and proper" to hold a licence. While the proposal was put forward for the best of reasons, it is difficult to see why it should be a function of the state to require such training.

A case could no doubt be made for requiring sufficient knowledge of the relevant requirements of the law. But it could equally well be made for other areas of the retail trades where it is not, and never has been legally required. So far as competence to run a business is concerned, that is a matter for the individual concerned or their employer. If they do not know, or are not capable of learning, how to run their business they will sooner or later fail. But avoidance of failure is not, and should not be, the responsibility of the state. Freedom to compete carries with it the responsibility to do so sensibly.

### **Free houses**

Why premises should require a licence is by no means clear. The fact that they do has been used, both with and without the recognition of the law, to achieve objectives which could equally well have been achieved in other ways or which are not properly the function of the state at all. But that is not a reason for their retention.

As already noted, the power to refuse a licence has been used to restrict the number of licensed premises, either to prevent "over provision" or to limit availability. Indeed, under the reformed Scottish licensing law, one of the specified grounds for refusing the grant of a licence is that there are already sufficient licences of the type sought in the area concerned.

Such constraints on competition were not seen by either the Erroll or the Clayson Committees as a legitimate function of the licensing system. The following words from the Erroll Report can adequately speak for both: "It is not part of the licensing justices' functions to assess whether there exists a market demand for any proposed new facilities, or to protect existing licence holders against competition."<sup>31</sup>

### **Double standards**

Equally common has been the tendency, noted above, by other agencies to use the licensing system as a means of enforcing standards which they already possess adequate authority to impose in other ways. The grant of a licence may be made conditional on certain works being carried out to meet the requirements of the local firemaster or the threat of suspension of a licence may be used to bring pressure to bear to have premises brought up to a standard acceptable to the environmental health officers.

Both of these objectives could and should be achieved by the relevant departments using their existing legal powers in the same way that they do for unlicensed premises to ensure, for example, that they are safe and properly run, that they comply with the fire regulations and that any areas used for serving the public with drink or food are kept clean.

Equally inappropriate is the use that is often made of licensing powers to bring about a raising of general standards in licensed premises above that which the licence holders would otherwise have chosen. Not only does this practice involve the imposition of the licensing authority's views of acceptable or desirable on a public who might disagree. It means, almost inevitably, that the cost of making such improvements must fall on the

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<sup>31</sup> Report of the Departmental Committee on Liquor Licensing (London: HMSO Cmnd. 5154 1972) (Page 271 para.13)

customers, who might well have preferred a lower standard of decoration and lower prices.

There is ample evidence from the widespread moves by breweries to improve their pubs that change would have taken place in any case, and that the existing customers are often far from happy at the outcome. As the Erroll Committee noted, "the beer in these types of premises is dearer and the modernisation schemes which make this necessary are not, in our experience, always well received by established regular public house users."<sup>32</sup>

Abolishing the requirement for premises to be licensed would bring to an overdue end both this multiplicity of controls and the abuse of power, albeit well intentioned, that goes with it.

Such a change would also bring to an end the use by licensing authorities of either the single licence with various conditions, or the variety of types of licence which Parliament has designed, in an attempt to impose their views of the ideal type or types of drinking establishments on the licensed trade. It would leave it up to the holder of a personal licence to provide for what he or she sees as the local demand, whether it be for a traditional rough and ready public bar, a more up-market cocktail bar or something like a continental cafe to which the entire family can come.

### Opening hours

The changes in opening hours introduced in Scotland in 1976 have gone a long way to ensure that licensed premises can and do provide a service to their customers at times that are convenient to them, rather than at times which once suited the effort required to win the First World War. Implementing the somewhat more liberal Erroll committee recommendations would do the same for England and Wales.

The position would still exist, however, where licensees who wished to open at any other times when they thought there was, or might be, consumer demand would have to apply for permission to do so. At the same time, unless restrictions were now to be imposed upon them, other premises including theatres, dance halls and other places such as "late night refreshment houses" would be able to sell drink as long as they could claim it to be ancillary to the entertainment or refreshment provided.

The factors to be taken into account in determining the hours during which licensed premises are permitted to open were stated by the Erroll Committee to include "the need for flexibility; safeguards against excessive drinking; protection for licensees and staff; public health and hygiene, ease of administration and enforcement; amenity; the special circumstances of establishments used mainly for some other purpose; and road safety."<sup>33</sup>

As with so much else in the legacy of the licensing laws, many of these factors could and should be controlled quite adequately in other ways. Substantial legislation exists

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<sup>32</sup> Report of the Departmental Committee on Liquor Licensing (London: HMSO Cmnd. 5154 1972) (Page 27 para.2.16)

<sup>33</sup> Report of the Departmental Committee on Liquor Licensing (London: HMSO Cmnd. 5154 1972) (Page 274 para.33)



to protect workers against onerous or unfair working conditions; drunk driving is an offence; and the environmental health authorities have all the powers they need to maintain public health and hygiene standards, even if there were any grounds for suggesting that longer opening hours posed a threat to them.

With regard to both drunk driving and the need for safeguards against excessive drinking it is worth noting that the Scottish experience showed that longer hours actually have a beneficial rather than a harmful effect.

So far as "ease of administration and enforcement" is concerned, if the permitted hours were widened further or, perhaps even abolished, then the entire machinery required for the issuing of special extensions, regular extended hours, plus the requirement for various special types of licences could be dispensed with. The police would be relieved of the work required, and the unpopularity incurred, in ensuring that the closing times were observed.

If any nuisance were caused it could be dealt with in several ways. If licensing were retained for proprietors or their staff, whether administered by the police, the justices, or a council committee, the threat of suspending or revoking the licence and ultimately actually doing so, should provide adequate control. If licensing were abolished, the police could be given the specific power to close premises. Alternatively, a simplified procedure could be provided under which aggrieved neighbouring residents could take the offending establishment to court.

The only factors left to be taken into account are flexibility and amenity, both matters over which the licensee and his customers are better judges than any justices or councillors could hope to be. Supply will ultimately respond to demand and the services that the public want will be provided without the necessity of complicated legislation and perpetual state involvement.

## 8. Conclusion

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For far too long, the interests of those who wish to enjoy a drink in a relaxed environment of their own choosing: have been subordinated to the combined demands of those who are morally opposed to the consumption of alcohol, of social meddlers who think they know better than the man in the street what is good for him, and of those who mistakenly attribute every alcohol related ill to its general availability.

According to the Family Expenditure Survey, going out for a drink is the largest single item of leisure expenditure for the average family, taking up more than 22% of all such expenditure and exceeding even the amounts spent on holidays. It seems only reasonable that it should be enjoyed in the kinds of environment that people want and at the times they want.

Unfortunately, over the years, the inability of a small number of people to cope with alcohol has been used as the justification for restricting the freedoms of the great majority. Without the evidence to establish a causal link, it has been assumed that restrictions on the availability of alcohol contribute to a reduction in drink-related problems. The success of the liberal reforms in Scotland has shown this to be nonsense. Less control has led to less trouble.

In the light of the Scottish experience, there can be no reason for any further delays in introducing into England and Wales the similarly liberal licensing laws proposed by the Erroll Committee, particularly in relation to an extension of opening hours to the period between 10.00 a.m. and 12.00 midnight.

At the same time, the opportunity should be taken to remove from Scottish licensing laws the anachronistic and irrational features that still survive.

But such reforms will only go part of the way towards creating a climate in which the free market can act to balance supply and demand. The position will still exist where legitimate demands of customers will not be met because justices of the peace, councillors or the law of the land dictate otherwise. Whatever the historical justification for their doing so, it is impossible to justify such restrictions in the closing decades of the twentieth century.

Nor is it just the general public in Britain that must be considered. Equally important is the negative impact our restricted licensing laws have on our increasingly important tourist industry. Tourism is profitable and labour intensive and has an impressive record of sustained growth. But it is not helped by the difficulties foreign visitors encounter in getting a drink at certain times of the day.

Only where controls are reduced to a minimum can the licensing trade respond to the demands of the home and tourist market and develop as wide a variety of possible places where drink can be enjoyed, catering for the widest possible variety of consumer demands.

In theory, at least, there seems no reason why selling drink should be treated any differently from the sale of any other goods or services and totally freed from the restrictive burden that licensing imposes. Other premises that cater for the public must comply with the food hygiene, fire and other safety regulations. They do not require the superimposing a licensing system onto existing statutory powers to achieve that control.

The proprietors of most other retail premises have to comply with the law of the land and do not require to be licensed to ensure that they do so. Even control over potential nuisance can be achieved without the need of any licensing system.

If, however, it is considered that the nature of alcohol is such that some degree of control over its sale is felt essential, then it does not seem unreasonable to suggest that it be treated in the same way as the potentially far more dangerous ownership and use of firearms are, and controlled through a simple personal licence issued by the police to any intending publican who satisfied certain basic specified conditions as to his character.

Beyond that, the operations of the market place should be left to determine the number, nature and extent of retail outlets for alcoholic drinks.

## 9. Appendices

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### Appendix A

The Erroll Committee summarised its main recommendations on licensing as follows (pages 273 and 274):

- (a) there should be two statutory types of licence — one personal to the proprietor of the premises, and the other held by the owner — called, respectively, a personal licence and a premises licence;
- (b) any difference between types of outlet regarding the nature of the premises or the nature of intoxicating liquor allowed to be sold, should be specified in conditions of licence;
- (c) licensing justices should have the power to refuse an application for the grant or renewal of a personal licence on the grounds that the applicant is not a fit and proper person;
- (d) in case of renewals, licensing justices should be enabled to take into account the manner in which the applicant for a personal licence has operated the premises in which he is working;
- (e) after consultation with the licensed trade and the brewing industry, the Secretary of State should be able to bring into force a requirement that personal licence holders should have received an approved course of training. In the meantime, licensing justices should be able to take into account, when considering applications for personal licences, whether an applicant has had appropriate training. These provisions will not apply to existing licensees who have held their licences for over ten years;
- (f) the duration of personal and premises licences should be three years;
- (g) the grounds for refusal to grant or renew a premises licence should be as follows:
  - (I) that the premises are not suitable or convenient for the sale of intoxicating liquor, having regard to their location, their character and condition, the nature and extent of the proposed use and the persons resorting to likely to resort to the premises;
  - (II) that the use of the premises for the sale of intoxicating liquor has caused or is likely to cause a public nuisance or a threat to public order or public safety;
- (h) there should be a right of objection on initial grant and renewal of both premises and personal licences. Personal licences should be endorsed on conviction of the holder for offences under the licensing law;

(i) in the case of premises licences, local authorities should be required to certify as to the suitability or otherwise of the premises in respect of matter relating to planning, food hygiene, public safety and fire precautions, sanitation and building regulations;

(j) the licensing justices would be required (subject to certain exceptions) to refuse the grant or renewal of a premises licence if a certificate of suitability was not granted on any ground or if the planning issue was undecided. The justices would have discretion to refuse on any of the grounds set out in (g) above, provided that these were not in respect of matters which had been certified as suitable by a local authority;

(k) licensing justices should be able to delegate renewals of licences to their clerks in cases where no objections have been received and where a local authority certificate of suitability has been provided;

(l) off-sales outlets and premises licensed under statutes regarding places of public entertainment and premises used for various forms of gaming should be exempt from the local authority certification procedure;

(m) justices should be able to order at quarterly intervals the suspension or revocation of personal and premises licences if it seems to them desirable in the public interest. This power should be exercised only on complaint from a local authority or chief officer of police;

(n) there should be grounds for the disqualification of individuals from holding personal licences and for the automatic forfeiture of a personal licence;

(o) there should be a right of appeal against a decision of the justices to order the revocation or suspension of a personal or premises licence;

(p) licensing justices should be able to impose any conditions they think appropriate on the grant or renewal of personal and premises licences;

(q) there should be suitable provision for continuing a personal licence in force after the death of the holder and for the issue of a provisional authorization by the clerk to the justices to an individual, pending an application for a personal licence. There should also be provision for notifying a change of ownership of licensed premises;

(r) there should be a right of appeal, in appropriate cases, to the Crown Court. But the present requirement that the Crown Court should include representatives of the justices of the area from which the appeal originates should be reconsidered.

## **Appendix B**

The Erroll Committee put forward the following recommendations regarding opening hours (Pages 274 to 276):

- (a) subject to our other proposals, that a personal licensee be permitted to sell intoxicating liquor by retail for on-consumption at any time between 10 a.m. and 12 midnight;
- (b) that licensing justices, at quarterly licensing sessions, should be empowered, on application, to make a restriction order requiring any one or a number of licensed premises to close for a period of up to two consecutive hours at any time before 7 p.m., provided that they are satisfied that this is in the interests of public order, safety, health or amenity. Similarly, licensing justices should be able to restrict the terminal hour in any one or a number of licensed premises by up to two hours before midnight. Licensees should be able to apply for the revocation of an order after three months and to appeal to the Crown Court against any decision by the justices to continue the order in force beyond that period;
- (c) the law should provide that nothing in any tenancy agreement should directly or indirectly affect the right of a personal licensee to open or close within permitted hours on such times and on such days as he thinks fit. Justices should not be able to require premises to remain open all permitted hours, and personal licensees should be able to request that their permitted hours be restricted to certain parts of the year and to require that the licence applying to the premises in which they work shall contain a condition providing for no Sunday opening. The law should provide specifically that permitted hours are not obligatory;
- (d) licensing justices should have discretion whether or not to grant applications for extensions (whether on a regular or a temporary basis) of permitted hours before 10 p.m. or after midnight. In the Metropolitan Police District and the City of London, this power should be exercised by the Commissioners of Police. So far as is possible, applications for extensions should be dealt with on an administrative basis;
- (e) the opening hours for off-sales should be 8.30 a.m. to 12 midnight, but that the licensing justices should be able to restrict these in the same way as proposed in the case of on-licences;
- (f) the permitted hours on Sundays, Good Friday, and Christmas Day should be the same as those on any other day, but licensing justices should be able to impose restriction on the ground that disturbance has been or is likely to be caused to places of public worship;
- (g) Licensing justices should be empowered to issue a certificate to the effect that premises are licensed under a statute regulating public or private entertainment, and that the sale of intoxicating liquor on the premises is ancillary to the main purpose for which the premises are used. The grant of such a certificate should confer exemption from permitted hours restrictions. There should be a right of appeal against a refusal to grant a certificate on the grounds that the sale of liquor is not ancillary to the main use of the premises. There should be suitable provision for the

revocation of a certificate where the sale of liquor has ceased to be an ancillary activity;

(h) licensing justices should be empowered to issue a certificate to the effect that...premises are a restaurant and that the sale of liquor is a subordinate activity. On the issue of such a certificate, a licence would be deemed to be in force under the Late Night Refreshment Houses Act, 1969 for the purposes of the section which enables local authorities to restrict late night hours. Subject to this, the holder of a certificate should be exempt from permitted hours restrictions. Provision should be made for a right of appeal and for revocation of the certificate where sale is no longer ancillary;

(i) there should be no provision for drinking up time.

## Appendix C

Although substantial improvements were made in Scotland's licensing laws less than a decade ago, the natural conservatism of its politicians ensured that many out of date features, accumulated over two centuries, survived to produce significant irritations and irrationalities. Even if no radical change is to take place in the system of licensing there is an unarguable case for further legislation to remove these nonsenses.

(a) The permitted hours should be extended to midnight and the afternoon break should be abolished. Virtually all licensing boards will grant regular extensions to cover both of these periods on request and it would make sense to eliminate the work involved in making and processing the necessary annual applications. It might, at the same time, make sense to add an hour in the morning to bring the permitted hours into line with those of 10.00 a.m. to 12.00 midnight proposed by the Erroll Committee.

(b) The artificial distinction that still exists between hotels and public houses should be ended. Unlike hotels, pubs have no automatic right to open on Sundays. They must seek permission each year from the licensing board. Nor can they apply for any extension of permitted hours on a Sunday. Both types of establishment should enjoy the same conditions.

(c) With the changed conditions that now exist there is no longer a case for retaining separate forms of licence for restaurants or for hotels that do not serve non-residents. They should be incorporated, respectively, into ordinary public house and hotel licences.

(d) The difference in permitted hours between off-sales outlets and other licensed premises should be minimised. At present, the corner grocery shop is limited to the hours between 8.00 a.m. and 10.00 p.m. Pubs and hotels, however, can sell drink for consumption off the premises whenever they are open. There seems no good reason why off-sales premises should be denied the same right as pubs and hotels to open up to midnight.

(e) Off-sales premises are not permitted to operate on Sundays but pubs and hotels are allowed to open for business and can sell drink for consumption off the premises. In a day and age where shift working is commonplace and the traditional weekend no longer exists for many people that distinction should be removed. If a person can buy drink in a bar both to consume there or at home there seems no good reason why off-sales outlets should be refused the right to trade.

(f) Private clubs are licensed by the local Sheriff Court, quite separately from the licensing arrangements that cover all other places that sell alcohol and yet, so far as any extension to their permitted hours of opening is concerned,

they have to join with other premises in applying to the licensing board. It would seem sensible that they be brought under the same licensing system as all other premises where alcoholic drinks are sold.

(g) It is still a reason for refusing a licence that an area is sufficiently well served by existing licences, despite the fact that the Clayson Committee recommended against



giving licensing boards any such power. To their credit, many boards have not seen it as their responsibility to stifle competition in this way. Nonetheless, it is a power that is difficult to justify and it should be abolished,

(h) Licensing boards are still able to impose their own view of what is socially acceptable so far as permitting extensions of opening hours. While it may well be considered right to restrict opening where there is evidence of nuisance being caused to neighbours, it is somewhat more difficult to justify restricting late opening on a Saturday night so that functions do not continue on into a Sunday morning, particularly so when those same premises will be legally open for business at other times, later on that day. It would be preferable if the grounds on which an application for extended hours could be refused were specified, as has been done with the power to refuse applications for a licence.

(i) Among more minor idiosyncrasies that serve no obvious or useful purpose are the requirement that there be no bar in any room where children are having a meal with their parents although there may be a "server". It is improbable that children are unaware of the appearance or function of a bar although they may have the same difficulty as adults in determining a clear dividing line between one and a so-called server.