

Drinking Again! SCPO Briefing 6/9

SCPO Briefing Paper 6/4 outlined the issues raised by the Nicholson Report on Licensing Law Reform. The Scottish Executive have now considered responses to that consultation and produced proposals for a draft Bill (also covering the report of the Daniels Committee on Off-Sales), again the subject of further consultation, with responses requested by 31 August. This new Briefing Paper updates the previous one, in light of these developments and a meeting between the Executive Bill Team and church representatives in July 2004.

The caricature suggested last autumn by the Sunday Times ("Scottish church leaders have formed a cross-faith campaign group to oppose the planned liberalisation of drinking laws") does not reflect the churches' stance. However, crucial questions have been raised with the Executive, focussing on the relationship between the proposals (which broadly reflect those of the Nicholson Report) and the Executive's Plan for Action on Alcohol Problems.

That Plan (launched in 2002) recognised that, in Scotland, "problem drinking is costing at least £1bn in health costs, sick days and lost productivity - enough to build 10 new hospitals every year (Mary Mulligan)"; more recent Executive statistics showed a 22% increase in alcohol-related hospital cases over 5 years, and 1957 alcohol-related deaths in 2002 (compared with 583 in 1980. While the Scottish trends reflect the UK picture, other European countries have achieved reductions in alcohol problems. However, there are different views as to how well the proposals for modernising Licensing Law reflect with the urgency needed to address these problems.

In launching the proposals, Cathy Jamieson said that the Executive "take the problem of the harm caused by alcohol abuse very seriously", adding that "liquor licensing legislation is one of the routes we have available to us that can support the other measures we are taking though the Plan for Action". The Executive have also suggested that there are strong links between the two policies (including measures on under age drinking and some expansion of the grounds for objecting to licenses to include over-provision), which will be made more explicit in a future, revised version of the Plan. Yet, others feel that there has been uncritical acceptance of the conventional wisdom (which also informed the relative liberalisation of thirty years ago) that relaxed regulation will lead to more "civilised" drinking, when the alarming growth of binge drinking suggests otherwise.

1. Licensing Principles

The key - and the potential for positive links - lies in the "licensing principles", suggested by Nicholson as the first explicit policy basis for licensing law and accepted by the Executive for inclusion in future legislation. These are (a) the prevention of crime or disorder; (b) the promotion of public safety; (c) the prevention of public nuisance; (d) the promotion of public health; and (e) the protection of children from harm. These have been widely welcomed, as giving legislation and the work of Licensing Boards "a positive social purpose, and criteria against which progress can be measured"; while law and regulation cannot alone change the drinking culture of Scotland, they can provide a framework within which other aspects of the strategy can develop.

Clearly, these are broad principles, and Nicholson tended to devolve to local Licensing Boards decision-making on how to express the principles in, for example, licensing conditions. However, the Executive have suggested that "the clear benefits of local flexibility must be balanced by a prominent national framework which sets boundaries around some of that local discretion in the interests of national consistency". They therefore propose developing a set of minimum standard national licence conditions covering issues such as the access of children to licensed premises, the provision of adult entertainment, additional public safety requirements for late opening premises, and some specific differences relating to off-licences; these conditions are likely to include "no proof (of age) no sale" requirements and restrictions on "irresponsible promotions" (such as "happy hours" of heavily discounted drink prices). Suggestions are sought of other areas to be covered by national licence conditions.

Churches have tended to be supportive of national conditions to address the problem areas of under-age and binge drinking, while recognising the need to balance this with responsiveness to local conditions.

2. Licensing Forums

The Nicholson proposal for a National Licensing Forum is endorsed, with the additional suggestion that Ministers should have powers to issue statutory guidance to Licensing Boards on the discharge of their functions. Both would help strengthen connections between legislation and other measures to tackle alcohol problems (not least through links between the National Forum and the Scottish Advisory Committee on Alcohol Misuse).

Local Licensing Forums (governed and appointed by local authorities but with wide representation of interested parties) would encourage active participation in setting local policies, feeding into policy statements by Licensing Boards, although this approach does not mean that communities will be given a veto over

the establishment of licensed premises in their area. Church representatives have expressed concern that local authority appointment would compromise the independence needed for these forums, but the Executive responded by suggesting that existing non-statutory forums are run by Boards and apparently work well. It has also been suggested that local forums should have power to demand an annual "impact assessment" from Licensing Boards, to monitor compliance with the five principles, as well as having strong links with local Alcohol Action Teams.

3. Licensing Hours

One of the key reasons given for the need to reform existing legislation is that the "licensing hours" established in the 1976 Act have all but disappeared in practice. At 31 December 2003, 10,239 licensed premises held one or more regular extensions to permitted hours granted by Licensing Boards in Scotland; 92% of public houses and 87% of hotels (excluding restricted hotels) had regular extensions in force.

Controversially, Nicholson proposed an end to statutory licensing hours - as "unnecessarily restrictive" and eroded by widespread extensions - provoking headlines about 24-hour drinking, quickly denied by Sheriff Principal Nicholson as an intended outcome of his proposals. The Executive have accepted the basis of that approach, but also "understand some of the concerns of both trade and health groups who, for different reasons, oppose longer opening hours, particularly 24-hour opening". What is now proposed is that Licensing Boards determine opening hours to suit local circumstances, with a mandatory requirement for them to set out their policy on this clearly in their policy statement; there would also be a "presumption against 24-hour opening ... with limited exceptions set out in statutory guidance", although it is not clear whether and how such a presumption can be incorporated in legislation. Views are invited on this, and, in particular, on what the exceptions might be.

What remains unclear (and unexplored by the Executive) is what impact this might have in practice, and how the principles would be applied to the issue of opening hours. No assessment appears to have been made of whether this would limit current extensions (eg in areas where there have been public safety and/or disturbance issues) or remove all constraints. Yet there is evidence that most of the problems associated with alcohol misuse increase in parallel with increased availability. Crucially, would Licensing Boards have difficulty in justifying the placing of any curtailment on the hours of any premises opening when other premises had less (or no) curtailment - especially if the licensee appealed on a human rights and/or free competition basis?

4. Varieties of Licence

Nicholson proposed that the seven or more current types of licence be replaced with a single system, bringing clubs under the same jurisdiction as pubs but with distinct licences for premises and for persons. Operation of any type of licensed premises would require both a premises licence (based on suitability of the building) and a personal licence held by the person responsible for on-site running of the premises. The former would remain in force indefinitely, but could be varied on application by the licence holder, or by the Licensing Board in the event of breach of its terms in a way which "prejudiced the licensing principles". The latter, normally valid for ten years, would be granted to individuals with approved qualifications, allowing the licence holder to manage licensed premises, and to sell or supply alcohol without supervision.

For personal licences, the Executive support a move away from the moral judgement of who is a 'fit and proper person', instead emphasising more objective qualifications and relevant criminal convictions (a list of which would be included in the Bill). One area of possible concern, however, is that a designated personal licence holder would

not be required to be on the premises during all opening hours.

5. Training

Both Nicholson and Daniels stressed the importance of training to any successful system. Nicholson proposed that: (a) appropriate training prescribed in regulations should be made available to Licensing Board members; (b) in addition to the training requirement for personal licence holders, encouragement should be given to training for all who work in licensed premises, with training courses given official accreditation and specified in regulations; and (c) casual staff do not need to be given formal training but should be given in-house basic instruction by the designated personal licence holder and should at all times be under the supervision of a trained person. The Daniels Report proposed that training courses should be mandatory for personal licence holders and on-site training provided for all other employees with personal licence holders undertaking refresher training every 5 years.

Responding to comments made by churches and others during the earlier consultation, the Executive go further, believing that Board members' training should be mandatory, and Board members would not be allowed to sit until their training had been completed. In addition, "permanent staff who are servers of alcohol must receive appropriate mandatory training at an agreed national level (which would be lower than that required for personal licence holders)"; while "casual" staff (with a strict definition of "casual") would be exempt, they would have to undergo basic on-site training by a personal licence holder. This tightening of requirements has been welcomed by groups such as Alcohol Focus Scotland.

6. Objections to Licences

The Executive support the approach taken by the Daniels Committee of widening the entitlement to object and make representations to anybody who can show a "real and material interest" (replacing and widening the present list of entitled people

and groups); this would apply to all licensed premises. Future objectors would clearly have to base their case on the licensing principles, though it is explicit that over-provision in a given area might be a ground of objection and Boards will be required to make "a proactive assessment of overprovision in consultation with local communities".

Fundamentally, the approach hopes that community feelings will be better expressed through the local forums than through a legal process, which currently (and perhaps inevitably) favours the better-resourced corporate applicant over local objectors.

7. Ensuring Compliance

Nicholson recognised that the key to any effective system lay in monitoring and ensuring compliance. He proposed Liquor Licensing Standards Officers (with functions of guidance, mediation and reporting complaints) - welcomed by churches, though with reservations as to their independence if employed by local authorities. Broadly, the Executive have agreed, adding powers for LLSOs to issue oral warnings while Licensing Boards would have a range of other sanctions.

A recently-reported police suggestion that licensees should have a legal duty of care to members of the public who may be affected by the actions of their intoxicated customers is not raised in the consultation paper.

8. Children

While Nicholson suggested a presumption in favour of access by children to all licensed premises, the Executive (again responding to comments in the consultation) favour a system of "opting in" by licensees to child access, and then only if suitable arrangements are in place. However, they do wish to encourage more child-friendly pubs.

They will retain existing controls on the sale and supply of alcohol to under 18s, backed up by a "no proof, no sale" scheme; they would allow 16 year olds to buy certain low-alcohol drinks for consumption with a meal, but otherwise make it illegal for under 18s to consume alcohol on licensed premises (which it is not at present).

9. Binge Drinking and Happy Hours

A major recommendation of the Nicholson Report was that a standard condition be attached to premises licences that nothing should be done to promote excessive alcohol consumption; for many, this did not go far enough. Although the Executive press release for their proposals highlighted a "crackdown on irresponsible drinks promotions which encourage binge drinking and lead to anti-social behaviour", they are uncertain about how to establish a "workable solution" and "intend to ask the Expert Group to advise us on how we might seek to define an 'irresponsible promotion' leading to a standard national licence condition ... on this issue, we clearly need to involve the licensed trade to identify existing best practice". Responses to the present consultation may be crucial on this.

10. Other Issues

Other specific issues raised in the meeting with church representatives included (a) anomalies re armed forces canteens and trains (both currently exempt from licensing laws - no change proposed), (b) money-laundering and promotion of sectarianism in pubs (both of which the Executive are keen to tackle), and (c) petrol stations (to which they may grant permission to sell alcohol where these are "premises with an important community function").

Consultation responses are due in by 31 August.