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# LIQUOR LICENSING REFORM IN NORTHERN IRELAND

The Minister for Social Development outlined her plans for a programme of liquor licensing legislative reform for Northern Ireland in a Statement to the Assembly on 17 November 2008. The reforms, which will be introduced in two stages, represent the most significant changes to liquor licensing policy in 12 years. The purpose of this briefing paper is to provide a broad overview of the key issues that will be addressed in the planned two stage approach. The paper also briefly explores general issues around liquor licensing reform and modernisation in other jurisdictions including the Scottish Government's plans to introduce minimum alcohol retail pricing.

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## SUMMARY OF KEY POINTS

The Minister for Social Development outlined her plans for a programme of liquor licensing legislation reform in a Statement to the Assembly on 17 November 2008. The reforms, which will be introduced in two stages are said to represent the most significant changes to liquor licensing policy and legislation in 12 years.

The **first stage of reform** will be implemented in the form of a short bill and will contain provisions relating to the temporary closure of clubs and premises; a penalty points system; a statutory proof of age scheme; and more appropriate accounting requirements for registered clubs. The Minister received Executive approval for the Bill on the 29 January 2009 and it is hoped that it will be introduced in the Assembly by Summer 2009.

The **second stage of reform** will be implemented in the long term once the Review of Public Administration has been completed. These reforms will involve the transfer of responsibility for liquor licensing and clubs' registration from the courts to local government; the introduction of six new statutory licensing objectives; and the creation of a dual system of licensing to replace the current 12 licensing categories.

The Minister has also announced retention of the **surrender provision** at the present time. This provision was originally ear-marked for abolition under direct rule administration and was one of the most contentious issues arising from the proposed legislative reforms.

Liquor licensing policy and legislative reforms are currently underway in other jurisdictions, particularly in Scotland where the Scottish Government has proposed to introduce:

- **Minimum retail pricing:** establishing a minimum price for a unit of alcohol in a bid to reduce excessive alcohol consumption and alcohol related harm. The proposal has received support from many health-based organisations whilst others have opposed the plans believing that it would, for example, impact unfairly upon responsible drinkers and people on low incomes. However, a number of issues have also been raised about the compatibility of this proposal with EU competition regulations.
- **Control of 'Irresponsible Alcohol Promotions':** the proposals will put an end to promotions such as 'buy two – get one free' promotions in off-sales. The Home Office are also consulting on similar proposals for England and Wales by banning promotions in pubs and clubs such as 'all you can drink for £10' and by ensuring that customers in supermarkets are not required to purchase large amounts of an alcohol product to take advantage of price discounts.
- **Raising the Minimum Purchasing Age in Off-Sales to 21:** the Scottish Government suggests that this will assist in tackling the problem of alcohol misuse amongst young people and will encourage those aged 18+ to access on-sales premises in which there is a more supervised environment in which drinks are measured and controlled.

- **Introducing a Social Responsibility Fee:** the Scottish Government propose to apply this fee to some licensed retailers to help off-set the costs of dealing with the adverse consequences of alcohol.

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## INTRODUCTION

1. The Minister for Social Development outlined her plans for a programme of liquor licensing legislative reform and modernisation for Northern Ireland in a [Statement to the Assembly](#) on 17 November 2008<sup>1</sup>. These reforms, which will be introduced in two stages, represent the most significant changes to liquor licensing policy and legislation in 12 years. The **first stage of reform** will contain provisions relating to the temporary closure of clubs and premises; a penalty points system; a statutory proof of age scheme; and more appropriate accounting requirements for registered clubs. The first stage of reform will be implemented in the near future in the form of a short Bill. The Minister received the approval of the Assembly Executive for the Bill on 29 January 2009, it is hoped that the Bill will be introduced in the Assembly by Summer 2009 and will be in operation by early 2010<sup>2</sup>.
2. The **second stage of reform** will be implemented in the longer term once the Review of Public Administration has been completed and a new system of local government is in place (i.e. post-2011). These series of reforms will involve the transfer of responsibility for liquor licensing and clubs' registration from the courts to the newly-formed councils; the introduction of six new statutory licensing objectives; and a streamlining of the current 12 licence categories into a dual system of personal and premises licences. The Minister has also announced her intention to **retain the surrender provision** for liquor licences. This is a provision which requires a licence for a public house or off-sales to be surrendered to the court before a licence for a new business can be granted.
3. The purpose of this briefing paper is to inform the Committee for Social Development's consideration of the forthcoming Liquor Licensing Bill which will represent the first stage of the planned two-stage approach. The paper provides a broad overview of the key issues which will be covered in the Bill and some other general issues relating to liquor licensing reform and modernisation in other jurisdictions. For ease of reference this paper is divided into five sections. **Section one** provides a brief chronology of key developments leading up to the Minister's Statement to the Assembly on 17 November 2008. **Sections two** and **three** provide a broad overview of the two stages of legislative reform including a synopsis in respect of how the liquor licensing regime operates in other jurisdictions.
4. **Section four** examines the proposal to retain the 'surrender principle' for licensed premises in Northern Ireland. Finally, **section five** explores some other general issues which the Committee may wish to note including an synopsis of some of the Scottish Government's recent proposals for liquor reform, for example, the introduction of minimum alcohol retail pricing, further control of 'irresponsible' alcohol promotions, raising the minimum purchasing age in off-licensed premises to 21 and the introduction of a 'social responsibility fee' for certain licensed premises. This section also briefly explores a number of other general issues such as proxy purchasing, test purchasing, and Local Licensing Forums.

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<sup>1</sup> See Northern Ireland Assembly Official Report, 17 November 2008.  
[www.niassembly.gov.uk/record/reports2008/081117.htm](http://www.niassembly.gov.uk/record/reports2008/081117.htm)

<sup>2</sup> Information extracted from the Department for Social Development website,  
[www.dsdni.gov.uk/social\\_policy](http://www.dsdni.gov.uk/social_policy)

## SECTION ONE: AN OVERVIEW OF KEY DEVELOPMENTS

5. The review of Northern Ireland's liquor licensing laws was [announced](#) on 4 March 2004 by John Spellar MP, the then Minister with responsibility for Social Development. It is stated that the review sought to strike a balance between the need for a more flexible and balanced licensing framework and the need to regulate the sale of alcohol in a way that is effective, enforceable and equitable<sup>3</sup>.
6. A Liquor Review Team (LTR) was set up in May 2004 to carry out the review with an Inter-Departmental Steering Group comprised of the Department for Social Development; the Department of Health, Social Services and Public Safety; the Northern Ireland Court Service; the Northern Ireland Office; and the Police Service of Northern Ireland. The reviews Terms of Reference were to<sup>4</sup>:

*“...consider the key elements of Northern Ireland's liquor licensing law and practice, with particular reference to the implications for health and public order; and bring forward proposals aimed at striking a balance between facilitating the sale of alcohol, public safety and the public interest.*

*To refer in particular to the Licensing (Northern Ireland) Order 1996 and the Registration of Clubs (Northern Ireland) Order and have regard to the following issues:*

- *Opening hours;*
- *Enforcement;*
- *Surrender of a subsisting licence;*
- *Categories of licences;*
- *Wider public health issues;*
- *Licensing laws regarding children;*
- *Social and environmental issues; and*
- *Equality and equity issues”*

7. In November 2005, David Hanson MP announced the publication of the consultation document '[Liquor Licensing – The Way Forward](#)' which set out proposals for liquor licensing reform. Commenting at that time, the Minister highlighted the diversity of interest in the reforms,

*“In considering the way forward I have been keenly aware of the need to weigh up the rights, needs and demands of the various interests concerned. These are wide-ranging. They include urban regeneration interests, employers and employees in the tourism and hospitality industry, town managers, the PSNI, health and community interests, residents and the general public”.*

8. There were 963 written responses to the consultation reflecting the scale of interest in the proposed reforms and the Department published a [summary](#)

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<sup>3</sup> Department for Social Development. News Release, 'Spellar Announces Review of Drinking Laws'. <http://archive.nics.gov.uk/sd/040304a-sd.htm>

<sup>4</sup> Department for Social Development. Liquor Licensing – The Way Forward. Government Proposals to Reform Liquor Licensing Law in Northern Ireland. Consultation Document. October 2005, p7. [www.dsdni.gov.uk/lrt\\_liquor\\_licensing\\_consultation\\_document.pdf](http://www.dsdni.gov.uk/lrt_liquor_licensing_consultation_document.pdf)

[analysis](#) of the views of consultees on each of the policy proposals in July 2006<sup>5</sup>. The review process was also supported by research and analysis which included:

- a [literature review](#)<sup>6</sup> on the impact of licensing and other controls on alcohol consumption;
  - [Northern Ireland Omnibus Survey](#)<sup>7</sup> questions to assess views on issues such as opening hours, off-licenses, alcohol and anti-social behaviour, and underage drinking; and
  - A [survey of PSNI District Commanders](#)<sup>8</sup> across Northern Ireland and their experiences, concerns and priorities in relation to the introduction of a new licensing regime.
9. On 20 July 2006, the Minister [announced](#) his final decision on the proposals in the form of a Written Statement to Parliament<sup>9</sup>. However, the proposals were not implemented as responsibility for liquor licensing passed to the Northern Ireland Executive on restoration of devolved government. On 17 November 2008, the Minister for Social Development announced her plans for a two-stage programme of liquor licensing legislative reform for Northern Ireland in a Statement to the Assembly.

## **SECTION TWO: THE FIRST STAGE OF REFORM**

10. The first stage of the liquor licensing reforms will be introduced in a short Bill. The Bill will amend both the [Licensing \(Northern Ireland\) Order 1996](#)<sup>10</sup> and the [Registration of Clubs \(Northern Ireland\) Order 1996](#)<sup>11</sup> and will cover four main areas, i.e. new temporary closure powers to allow the police and courts to shut down premises where there is actual or likely disorder; a new penalty points system for those premises which break the law; a statutory proof of age scheme; and new accounting requirements for registered clubs.

### CLOSURE POWERS

11. It is proposed that the new Bill will make provisions for new closure powers enabling a court to order licensed premises or registered clubs in an area of actual or anticipated disorder to close for up to 24 hours in the first instance. It

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<sup>5</sup> Department for Social Development. 'Liquor Licensing – The Way Forward' Analysis of Responses to Public Consultation. July 2006.

[www.dsdni.gov.uk/lrt\\_consultation\\_analysis.doc](http://www.dsdni.gov.uk/lrt_consultation_analysis.doc)

<sup>6</sup> Department for Social Development. Liquor Licensing Review Northern Ireland: Review of the Literature on the Impact of Licensing and Other Controls on the Consumption of Alcohol.

[www.dsdni.gov.uk/literaturereview.doc](http://www.dsdni.gov.uk/literaturereview.doc)

<sup>7</sup> Northern Ireland Statistics and Research Agency. Northern Ireland Omnibus Survey, October 2004. [www.dsdni.gov.uk/omnibus\\_survey.pdf](http://www.dsdni.gov.uk/omnibus_survey.pdf)

<sup>8</sup> PSNI Operational Support Department. Report for the Northern Ireland Licensing Review Team summarising the results of a survey of district commanders, regional headquarters and Criminal Justice Department's Community Safety Branch, October 2004.

[www.dsdni.gov.uk/police\\_report.doc](http://www.dsdni.gov.uk/police_report.doc)

<sup>9</sup> House of Commons Hansard. 20 July 2006.

[www.publications.parliament.uk/pa/cm200506/cmhansrd/vo060720/wmstext/60720m0003.htm#06072031000418](http://www.publications.parliament.uk/pa/cm200506/cmhansrd/vo060720/wmstext/60720m0003.htm#06072031000418)

<sup>10</sup> Licensing (Northern Ireland) Order 1996.

[www.opsi.gov.uk/si/si1996/Uksi\\_19963158\\_en\\_1.htm](http://www.opsi.gov.uk/si/si1996/Uksi_19963158_en_1.htm)

<sup>11</sup> Registration of Clubs (Northern Ireland) Order 1996.

[www.opsi.gov.uk/si/si1996/Uksi\\_19963159\\_en\\_1.htm](http://www.opsi.gov.uk/si/si1996/Uksi_19963159_en_1.htm)

will repeal the power of the Secretary of State to close premises or reduce opening hours to preserve public order. It will also enable a senior police officer to close premises with immediate effect for up to 24 hours where disorder or noise nuisance is occurring or is imminent<sup>12</sup>. The Minister has also indicated that offences of failing to comply with the new closure orders would also be created.

12. This move would bring Northern Ireland more into line with arrangements in Great Britain and the Republic in Ireland. In England and Wales, for example, [Part 8 of the Licensing Act 2003](#) extends powers to police to close individual licensed premises, or all licensed premises in a geographical area, for actual disorder or anticipated disorder. Closure orders can be implemented primarily in two ways:

- **Closure by court application in advance of an event** – the magistrates' court, on application by the police, have the power to (a) close all licensed premises within a specific geographical area for up to 24 hours (b) temporarily or permanently reduce trading hours and (c) suspend or revoke liquor licences; and
- **Immediate closure without court application** – the police are permitted to enforce an instant closure without a court application but are generally to be used only where unanticipated events or emergencies arise. The decision to enforce a closure under these circumstances should be made by senior police officers at the rank of inspector or above<sup>13</sup>.

#### PENALTY POINTS SYSTEM

13. The proposed Bill will also introduce a new penalty points system which will enable a court, following conviction, to endorse penalty points on a license or certificate of registration. The court will have some discretion but for serious offences, e.g. underage sales, endorsement would be mandatory. Premises accumulating 10 penalty points within any three year period would have their licence or certificate suspended for a period of between a minimum of one week and maximum of three months<sup>14</sup>. The Minister has indicated that the penalty points system will be unique to Northern Ireland and maintains that Northern Ireland already has a precedent for penalty points in that registered clubs may receive points for financial offences, e.g. an accumulation of ten points can lead to a club's registration being cancelled<sup>15</sup>.

#### STATUTORY PROOF OF AGE SCHEME

14. The proposed Bill will introduce a statutory proof of age scheme in recognition of the serious problem of alcohol abuse and young people. The scheme will specify acceptable proof of age documents for the purposes of licensing and registered clubs. These documents will include:

- Passports;

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<sup>12</sup> Department for Social Development. News Release, 'Minister Ritchie paves the way for new alcohol regime'. 17 November 2008. [www.northernireland.gov.uk/news/news-dsd/news - dsd-171108-minister-ritchie-paves.htm](http://www.northernireland.gov.uk/news/news-dsd/news - dsd-171108-minister-ritchie-paves.htm)

<sup>13</sup> Information extracted from The Home Office website - [www.respect.gov.uk/members/article.aspx?id=7888](http://www.respect.gov.uk/members/article.aspx?id=7888)

<sup>14</sup> Department for Social Development. News Release, 'Minister Ritchie paves the way for new alcohol regime'. 17 November 2008. [www.northernireland.gov.uk/news/news-dsd/news - dsd-171108-minister-ritchie-paves.htm](http://www.northernireland.gov.uk/news/news-dsd/news - dsd-171108-minister-ritchie-paves.htm)

<sup>15</sup> See Northern Ireland Assembly Official Report, 17 November 2008. [www.niassembly.gov.uk/record/reports2008/081117.htm](http://www.niassembly.gov.uk/record/reports2008/081117.htm)



- Photocard driving licences;
  - Northern Ireland Electoral Card; and
  - Any PASS-accredited photo identity card.
15. The Bill will incorporate power to make regulations specifying other documents as necessary. Premises will be required to display specific signage describing the new scheme and it will be an offence to fail to display the signage<sup>16</sup>.
16. The Scottish Government support the use of a 'Young Scot National Entitlement Card' as a proof of age card when purchasing alcohol, tobacco and other age-restricted products. This is a free electronic smart card available for young people aged 11 to 26. The card bears the [PASS](#) (Proof of Age Standards Scheme)<sup>17</sup> hologram and is approved by the Home Office<sup>18</sup>. This is not a mandatory proof of age scheme and carrying the card is a *voluntary* matter. Some retailers in Scotland have adopted the voluntary '[Challenge 21](#)'<sup>19</sup> initiative to raise awareness amongst staff of their responsibilities in preventing underage sales. The initiative encourages retailers and licensees to seek proof of age from anybody who appears to be under the age of 21. The Scottish Labour Party has recently called on the Scottish Government make the 'Challenge 21' scheme mandatory across Scotland<sup>20</sup>.
17. Some stores across the UK have a 'Challenge 25' policy where those appearing to be under the age of 25 will be asked for proof of age. A number of jurisdictions outside the UK and Republic of Ireland have mandatory proof of age schemes in operation in various forms. Perhaps the most stringent example is Tennessee (USA) which became in 2007 the first US state to require valid ID for off-premises beer purchases regardless of age (under the 'Tennessee Responsible Vendors Act 2006')<sup>21</sup>.

#### NEW ACCOUNTING REQUIREMENTS FOR REGISTERED CLUBS

18. The [Registration of Clubs \(Northern Ireland\) Order 2006](#) tightened the regulations under which registered clubs operated by setting minimum criteria and standards with a particular emphasis on financial controls and accounts (see the [Registration of Clubs \(Accounts\) Regulations \(Northern Ireland\) 1997](#) for further details). The 'Liquor Licensing – The Way Forward' consultation document highlights that this development was requested by the police to help tackle financial mismanagement in clubs. In 2004 the PSNI proposed that the Regulations should be reconsidered with a view to relaxing them and that there was scope to simplify the auditing requirements and replace many of the other mandatory requirements with a system of guidance and best practice<sup>22</sup>.

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<sup>16</sup> Department for Social Development. News Release, 'Minister Ritchie paves the way for new alcohol regime'. 17 November 2008. [www.northernireland.gov.uk/news/news-dsd/news\\_-\\_dsd-171108-minister-ritchie-paves.htm](http://www.northernireland.gov.uk/news/news-dsd/news_-_dsd-171108-minister-ritchie-paves.htm)

<sup>17</sup> PASS is the UK's national guarantee scheme for proof of age cards See [www.pass-scheme.org.uk/](http://www.pass-scheme.org.uk/)

<sup>18</sup> Scottish Parliament Question S3W – 18051. Identity Cards. [www.scottish.parliament.uk/Apps2/Business/PQA/Default.aspx](http://www.scottish.parliament.uk/Apps2/Business/PQA/Default.aspx)

<sup>19</sup> For further information on the 'Challenge 21' initiative see [www.challenge21.co.uk/](http://www.challenge21.co.uk/)

<sup>20</sup> Holyrood Magazine. 'Labour calls for law imposing 'Challenge 21' alcohol scheme'. 2 February 2009. [www.holyrood.com/content/view/3518/10552/](http://www.holyrood.com/content/view/3518/10552/)

<sup>21</sup> Times Online. 'Tennessee poised to become first state to require universal carding on beer sales'. 22 June 2007. [www.timesnews.net/article.php?id=9001774](http://www.timesnews.net/article.php?id=9001774)

<sup>22</sup> Department for Social Development, Liquor Licensing – The Way Forward, Op. Cit. p32.

19. The Northern Ireland Federation of Clubs has opposed the Regulations from the outset, describing them as *“unduly onerous, discriminatory and beset with practical difficulties”*<sup>23</sup>. The ‘Way Forward’ consultation paper acknowledges that stringent regulations can compound the problems of clubs, particularly in disadvantaged areas, that are coming under increasing pressure for survival given that the development of licensed premises in towns and city centres has changed drinking patterns and attracts more young people. The paper goes on to state that the *“Government believes that registered clubs can act as a centre for the community in many areas and provide a resource which is useful in terms of taking forward neighbourhood renewal”*<sup>24</sup>.
20. There appears to be little locally-based research on the social and economic impact of registered clubs on communities. However, a comprehensive review of registered clubs in New South Wales (Australia) maintains that registered clubs, *“provide considerable intangible social benefits that are impossible to quantify but should not be ignored. These include the sense of belonging that some club members feel and the greater social cohesion a community might experience as a result of having a club where people can meet and mix”*. The research also confirms that the financial viability of individual registered clubs varies greatly and that some are financially strong whilst others struggle for a variety of reasons including a lack of understanding of their own financial position; demographic changes; the level of competition from other venues in their communities; and the financial and management skills of their boards and managers<sup>25</sup>.
21. It is envisaged that the proposed Bill will create a more flexible accounting system for registered clubs which recognises the differing requirements for small, medium and large clubs. Provisions will be made to reduce penalties for certain offences and introduce guidance on issues such as control of accounts, cash holding and receipts. The Department reports that the PSNI has acknowledged that financial mismanagement which previously existed in some clubs is no longer in evidence and that more flexible arrangements would be appropriate<sup>26</sup>.

### SECTION THREE: THE SECOND STAGE OF REFORM

22. The Minister for Social Development has announced that the second stage of reform will involve more fundamental changes to liquor licensing legislation and will take place once the Review of Public Administration is completed and the new system of local government is in place. The aim of these reforms is to simplify and harmonize controls on the sale and supply of alcohol and will include:

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<sup>23</sup> Northern Ireland Federation of Clubs. Submission to the Department for Social Development Consultation ‘Liquor Licensing: The Way Forward’. January 2006. [www.nifederationofclubs.com/editorial%20pages/Deloitte%20submission.htm](http://www.nifederationofclubs.com/editorial%20pages/Deloitte%20submission.htm)

<sup>24</sup> Department for Social Development, Liquor Licensing – The Way Forward, Op. Cit. p32.

<sup>25</sup> Independent Regulatory Pricing Tribunal (2008) Review of the Registered Clubs Industry in NSW, p2. [www.ipart.nsw.gov.au/files/Final%20Report%20-%20%20Review%20of%20Registered%20Clubs%20Industry%20in%20NSW%20-%20APD%20-%20Website.PDF](http://www.ipart.nsw.gov.au/files/Final%20Report%20-%20%20Review%20of%20Registered%20Clubs%20Industry%20in%20NSW%20-%20APD%20-%20Website.PDF)

<sup>26</sup> Department for Social Development. News Release, ‘Minister Ritchie paves the way for new alcohol regime’. 17 November 2008. [www.northernireland.gov.uk/news/news-dsd/news - dsd-171108-minister-ritchie-paves.htm](http://www.northernireland.gov.uk/news/news-dsd/news - dsd-171108-minister-ritchie-paves.htm)

- the transfer of responsibility for liquor licensing and the registration of clubs from the courts to the newly-formed district councils;
- the introduction of six new statutory licensing objectives; and
- the abolition of the current 12 licensing categories in favour of a dual system of personal and premises licenses<sup>27</sup>.

#### TRANSFER OF RESPONSIBILITY FROM COURTS TO LOCAL GOVERNMENT

23. Under the current liquor licensing regime in Northern Ireland, first time applicants for a licence to sell alcohol, applications for consent to alterations to a licensed area or applications for a certificate of registration (for registered clubs) to supply alcohol must be made to a county court. Applications for renewal of a licence/certificate must be made to a magistrate's court<sup>28</sup>.

24. The [Licensing \(Northern Ireland\) Order 1996](#) sets out the procedures for making an application to a county court for a licence which may be granted for up to five years. A copy of the application must be provided to the local police and district council and must include a plan of the premises providing details of the part(s) of the establishment in which alcohol will be sold. In granting or renewing a licence the court must be satisfied that the licence holder is a fit person to hold a licence. It must also be satisfied that the premises are suitable to be licensed for the sale of alcohol and will not cause a disturbance to the local community<sup>29</sup>.

25. Under the proposed second stage of reforms, responsibility for liquor licensing and the registration of clubs would transfer from the courts to the 11 new district councils in Northern Ireland. The Minister has stated that she is *"confident that this would increase the efficiency, effectiveness and accountability of the system and make it more responsive and accessible to local residents, planners and decision makers and those, including the licensed, hospitality, retail and other business sectors, on which local economies rely"*<sup>30</sup>.

26. The 'Liquor Licensing – The Way Forward' consultation document highlights that councils already have responsibility for a range of alcohol-related issues, such as entertainment licences, local planning, health and safety issues, noise pollution, town centre management and community safety partnership. The paper suggested that the transfer of responsibility from the courts to councils would be consistent with the objectives of the Review of Public Administration and highlighted further that under RPA, councils would have increasing responsibility for related issues such as town and city centre regeneration<sup>31</sup>.

27. In other jurisdictions responsibility for the granting and administration relating to liquor licensing rests with local councils. In Scotland, for example, there is a [Licensing Board](#) in each council area appointed by the local council and which is responsible for all matters relating to the granting of licenses for the sale and supply of alcohol and various gambling activities. The Boards are separate legal

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<sup>27</sup> See Northern Ireland Assembly Official Report, 17 November 2008.

[www.niassembly.gov.uk/record/reports2008/081117.htm](http://www.niassembly.gov.uk/record/reports2008/081117.htm)

<sup>28</sup> Department for Social Development, Liquor Licensing – The Way Forward, Op. Cit. p12.

<sup>29</sup> Information extracted from the NI Direct Government Services website - [www.nidirect.gov.uk/index/property-and-housing/your-neighbourhood-roads-and-streets/crime-prevention-and-community-safety/law\\_on\\_licensed\\_premises\\_and\\_registered\\_clubs.htm](http://www.nidirect.gov.uk/index/property-and-housing/your-neighbourhood-roads-and-streets/crime-prevention-and-community-safety/law_on_licensed_premises_and_registered_clubs.htm)

<sup>30</sup> See Northern Ireland Assembly Official Report, 17 November 2008.

[www.niassembly.gov.uk/record/reports2008/081117.htm](http://www.niassembly.gov.uk/record/reports2008/081117.htm)

<sup>31</sup> Department for Social Development, Liquor Licensing – The Way Forward, Op. Cit. p12.

entities from the councils, their membership is made up of local councillors and they are supported administratively by their council licensing section.

28. Section 6 of the [Licensing \(Scotland\) Act 2005](#) places a duty on all Licensing Boards in Scotland to publish a [Licence Policy Statement](#) every three years. The purpose of such a statement is to provide assistance to a Licensing Board in the implementation of the Act and to outline the ways in which Licensing Boards intend to exercise this function<sup>32</sup>. The Statement must ensure that the policies seek to promote the five licensing objectives (further information on these objectives is outlined in the next section).
29. In England and Wales, the [Licensing Act 2003](#) transferred responsibility from Magistrates Courts to [Licensing Authorities](#). Licensing Authorities are local authorities who usually delegate responsibility for licensing to Licensing Committees, these are generally made up of between 10-15 local councillors. Similar to Scotland, the Licensing Act 2003 requires that each Licensing Authority publishes a '[Statement of Licensing Policy](#)' to be reviewed every three years, this policy must seek to promote the four licensing objectives in England and Wales (see next section for further information on objectives)<sup>33</sup>.
30. A recent [evaluation](#) by the Department for Culture, Media and Sport on the impact of the Licensing Act 2003 in England and Wales maintained that the transfer of alcohol licensing to local authorities has been viewed as a success; that the alcohol licensing system is more democratically accountable and residents are better able to influence licensing decisions<sup>34</sup>.
31. In the Republic of Ireland, the court system continues to be the main decision making body in respect of the granting of liquor licences.
32. Under the proposed second state of reforms for Northern Ireland, each new council will be responsible for drawing up a Statement of Licensing Policy for its area. The councils will also be responsible for decisions on the granting, reviewing and renewal of premises licences and registered club certificates. In carrying out this remit, councils will be required to consult with residents, police, licensees, retailers and other businesses in the area as well as those responsible for environmental health, planning and health and safety issues.

#### SIX STATUTORY LICENSING OBJECTIVES

33. It is proposed that the second stage of licensing reform and modernisation will introduce six new licensing objectives to underpin the revised licensing legislation (see Table 1 for the proposed objectives). The 'Liquor Licensing – The Way Forward' consultation document recognised that there is a clear link between alcohol and problems relating to crime, public nuisance, health and children and young people. It maintained that introduction of these six objectives would contribute to a range of Northern Ireland Departmental policies and reflect the efforts being made by Departments (e.g. NIO, DHSSPS, DSD) in tackling issues

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<sup>32</sup> Falkirk Council Licensing Board. Licensing (Scotland) Act 2005, Licensing Policy Statement.

[www.falkirk.gov.uk/services/development/consumer\\_protection/licensing/alcohol\\_and\\_gambling/licensing\\_board/licensing\\_scotland\\_act\\_2005/licensing\\_scotland\\_act\\_2005.aspx](http://www.falkirk.gov.uk/services/development/consumer_protection/licensing/alcohol_and_gambling/licensing_board/licensing_scotland_act_2005/licensing_scotland_act_2005.aspx)

<sup>33</sup> For further information on Licensing Authorities see

[www.culture.gov.uk/what\\_we\\_do/alcohol\\_and\\_entertainment/4052.aspx](http://www.culture.gov.uk/what_we_do/alcohol_and_entertainment/4052.aspx)

<sup>34</sup> Department for Culture, Media and Sport (2008) Evaluation of the Impact of the Licensing Act 2003, p7. [www.culture.gov.uk/images/publications/Licensingevaluation.pdf](http://www.culture.gov.uk/images/publications/Licensingevaluation.pdf)

such as anti-social behaviour, the promotion of public health and safety, the protection of children, and producing an environment for social drinking which is safe whilst encouraging growth in the economy.

34. The consultation paper further maintains that the six objectives will have practical applications under the new legislation, e.g. local councils will be required to demonstrate how they intend to meet the objectives in fulfilling their functions in relation to liquor licensing. Members of the licensed trade and registered clubs who wish to vary their licences or certificates will be required to state how they intend to meet the objectives<sup>35</sup>.
35. The introduction of licensing objectives will bring Northern Ireland into line with developments in Scotland, England and Wales (see Table 1), the main difference being that the proposed objectives for Northern Ireland will include a 'Fair treatment for all stakeholders' objective whilst there is no similar explicit objective in the other jurisdictions.

**Table 1: Liquor Licensing Objectives**

Northern Ireland (Proposed 6 Objectives)	England & Wales (4 Objectives) <sup>36</sup>
<ul style="list-style-type: none"> <li>▪ Promotion of public health;</li> <li>▪ Promotion of public safety;</li> <li>▪ Prevention of crime and disorder;</li> <li>▪ Prevention of public nuisance;</li> <li>▪ Protection of children from harm; and</li> <li>▪ Fair treatment of all stakeholders.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Prevention of crime and disorder;</li> <li>▪ Prevention of public nuisance;</li> <li>▪ Public Safety; and</li> <li>▪ Prevention of harm to children.</li> </ul>
Scotland (5 Objectives) <sup>37</sup>	Republic of Ireland
<ul style="list-style-type: none"> <li>▪ Prevention of crime and disorder;</li> <li>▪ Security of public safety;</li> <li>▪ Preventing public nuisance;</li> <li>▪ Protecting and improving public health;</li> <li>▪ Protecting children from harm;</li> </ul>	<p>There are no explicit objectives within the Intoxicating Liquor Act 2003 but there are general provisions referring to:</p> <ul style="list-style-type: none"> <li>▪ The prevention of disorderly conduct; and</li> <li>▪ Preventing the purchase or consumption of intoxicating liquor for those aged under 18 years.</li> </ul>

**ABOLITION OF CURRENT 12 LICENSING CATEGORIES**

36. There are currently 12 categories of premises in Northern Ireland which may be licensed to sell alcohol, i.e.:

- Pubs;
- Off-licences;
- Hotels;
- Guesthouses;
- Restaurants;
- Conference centres;
- Higher education institutions;
- Places of public entertainment (e.g. theatres, ballrooms, race tracks);
- Refreshment rooms in public transport premises;
- Seamen's canteens;

<sup>35</sup> Department for Social Development, Liquor Licensing – The Way Forward, Op. Cit. pp10-11.

<sup>36</sup> Licensing Act 2003.

<sup>37</sup> Licensing (Scotland) Act 2005.



- Non-seagoing vessels; and
- Indoor arenas.

37. The sale of alcohol is the primary function of pubs and off-licenses, for the remaining 10 categories of premises the sale of alcohol is secondary to their main business. The second stage of reforms proposes to abolish these 12 categories of licence and replace them with a **dual system of personal and premises licences**. The 'Liquor Licensing - The Way Forward' consultation document maintained that this new dual system would have a number of advantages including less bureaucracy, greater flexibility and an improvement in operating standards<sup>38</sup>. As yet there is no details regarding how the dual system will operate in Northern Ireland, however, similar rationalisation of licensing categories and the introduction of the dual personal and premises licensing regime has already taken place in England and Wales and Scotland.

#### PREMISES LICENCES IN ENGLAND AND WALES<sup>39</sup>

38. The dual system of personal and premises licences was established in England and Wales under the Licensing Act 2003. The 2003 Act amalgamated six licensing regimes in England and Wales and replaced them with a single system of premises licences. Businesses now apply for a **premises licence** to authorise all the licensable activities they wish to engage in. Premises licences are not time limited (unless requested), nor subject to renewal every three years (as was the case for liquor licences) or have a duration of only a year (as was the case for public entertainment licences). Hearings on an application will only occur where representations from 'interested parties' or 'responsible authorities' are made.

39. Anyone who proposes to carry on a business involving licensable activities on the premises can apply for a premises licence. A premises licence holder may apply to the licensing authority to vary the licence which may include changes to the opening times of the premises, changes to the physical shape of the premises covered by the licence, changes to the licensable activities or conditions attached to the licence.

40. The application for a premises licence must include an **operating schedule** in which the applicant sets out various details of how the premises proposes to operate, e.g. the licensable activities to be carried out, proposed hours the licensable activities are to take place, premises opening hours and the name(s) of the designated premises supervisor. The application must also include a **plan of the premises** demonstrating, for example, the boundary of the building, points of access and exits, the local and height of any stage or raised area etc.

#### PERSONAL LICENCES IN ENGLAND AND WALES<sup>40</sup>

41. The new system of **personal licenses** in England and Wales permits a holder to sell alcohol for consumption on or off any premises covered by a premises licence, similar to the way in which a driving licence permits the driving of a car. In other words, a personal licence does not authorise its holder to supply alcohol anywhere, but only from establishments with a premises licence authorising the supply of alcohol in accordance with the premises licence.

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<sup>38</sup> Department for Social Development, Liquor Licensing – The Way Forward, Op. Cit. p29.

<sup>39</sup> Information in this section extracted from the Department for Culture, Media and Sport website - [www.culture.gov.uk/what\\_we\\_do/alcohol\\_and\\_entertainment/4058.aspx](http://www.culture.gov.uk/what_we_do/alcohol_and_entertainment/4058.aspx)

<sup>40</sup> Information in this section extracted from the Department for Culture, Media and Sport website - [www.culture.gov.uk/what\\_we\\_do/alcohol\\_and\\_entertainment/4057.aspx](http://www.culture.gov.uk/what_we_do/alcohol_and_entertainment/4057.aspx)

42. An individual may only hold one personal licence at a time. All premises licences authorising the supply of alcohol must have an identified personal licence holder known as the **designated premises supervisor** (known as the Designated Premises Manager in Scotland). More than one individual at the licensed premises may hold a personal licence although it is not necessary for all staff to be licensed. However, all supplies of alcohol under a premises licence must be made by or under the authority of a personal licence holder. A designated premises supervisor does not have to be on the premises at all times, they must however be contactable particularly if problems arise with the premises.
43. A personal licence is issued for ten years in the first instance. In most cases applicants for personal licences need to obtain an accredited qualification to be eligible to qualify for the licence and it is expected that the **personal licence qualification** will assist in raising the professional standards across the hospitality industry.

POST-LEGISLATIVE SCRUTINY OF THE NEW LICENSING REGIME IN ENGLAND AND WALES

44. In April 2009, the House of Commons Culture, Media and Sport Committee conducted a post-legislative scrutiny exercise of the Licensing Act 2003<sup>41</sup>. This included an examination of the personal and premises licensing regime. Overall, the Committee concluded that *“although the Licensing Act has simplified and improved the licensing process there is still concern that the system is too bureaucratic, complicated and time consuming, especially where a premises is run by volunteers”*.
45. The Committee made a number of recommendations in relation to personal and premises licences, for example:

**Licensing Application Fees and Annual Renewal Fees:**

- That sporting and not-for-profit clubs, with modest turnovers, should not face the same licensing costs as the commercial sector. Fee levels for premises licences and club premises certificates are set in bands according to rateable values (applications fees range from £100 for Band A to £635 for Band E, annual fees range from £70 for Band A to £350 for Band E). The Committee recommended that in the case of not-for-profit clubs only the bar area should be taken into account when assessing the rateable value of the premises for the purpose of determining the appropriate licensing fee and in the case of sports clubs, the Committee recommended that they should be placed in a fee band based on 20% of their rateable value.

**Licensing Forms**

- Many of those who submitted evidence to the Committee agreed that the new dual licensing system had streamlined the licensing process and promoting closer working between stakeholders. However, there were concerns, particularly for those premises run by volunteers, that the process was still too bureaucratic, complicated and time-consuming. The Committee recommended that the Government evaluate the licensing forms to ensure that they are user-friendly.

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<sup>41</sup> Culture, Media and Sport Committee (2009). The Licensing Act 2003. Sixth Report. 30 April 2009.  
[www.publications.parliament.uk/pa/cm200809/cmselect/cmcmds/492/49202.htm](http://www.publications.parliament.uk/pa/cm200809/cmselect/cmcmds/492/49202.htm)

**Personal Licences and a National Database:**

- The Committee highlighted that the lack of a national database on personal licence holders mean that it was possible for a licence holder whose licence has been revoked to subvert the system by applying for another licence in a different licensing authority area without detection. The Committee recommended that the Government should consider how to implement a national database to allow law enforcement agencies and licensing authorities to share information more effectively.

**SECTION FOUR: THE SURRENDER PROVISION**

46. Under current liquor licensing legislation in Northern Ireland, the granting of a new public house or off-sales liquor licence is conditional on the surrender to the court of an existing licence. However, this requirement does not apply if the prospective licence holder intends to continue the same business on the same premises but does apply where the new licence is required for a pub or off-licence elsewhere in Northern Ireland. The surrender provision exists nowhere else in the UK, it is unique to Northern Ireland and the Republic of Ireland and to the licensed trade<sup>42</sup>.
47. The 'Liquor Licensing – The Way Forward' consultation paper originally proposed to abolish the surrender requirement in favour of district councils deciding whether to grant a licence for further pubs or off-licences in their areas<sup>43</sup>. On 20 July 2006, David Hanson MP, the then Minister with responsibility for Social Development confirmed that the surrender principle would be abolished subject to a business impact assessment exercise<sup>44</sup>.
48. The proposed abolition of the surrender principle was perhaps one of the most contentious issues arising from the proposed liquor licensing reforms. In his statement to the House of Commons, David Hanson acknowledged that, *"Concerns have been expressed by politicians and parts of the licensed trade regarding two of the proposed changes. These are the transfer of responsibility for liquor licensing from courts to district councils and the abolition of the 'surrender' principle"*<sup>45</sup>. An analysis of consultation responses highlighted that *"the responses received concerning surrender were robustly opposed to the abolition of the surrender principle"*. In total, it is said that there were 847 negative and 20 positive responses and that the main concern was that abolition could lead to a proliferation of off-licences and alcohol related harm, anti-social behaviour and disorder. The licensing trade expressed specific concerns about the financial consequences for existing licence holders<sup>46</sup>.
49. On the 17 November 2008, the Minister for Social Development announced to the Assembly that *"in the absence of a robust evidence-base I have decided to take no action in relation to surrender at the present time"*. The Minister maintained

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<sup>42</sup> Department for Social Development, Liquor Licensing – The Way Forward, Op. Cit. p30.

<sup>43</sup> Ibid, p31.

<sup>44</sup> House of Commons Hansard. 20 July 2006.

[www.publications.parliament.uk/pa/cm200506/cmhansrd/vo060720/wmstext/60720m0003.htm#06072031000418](http://www.publications.parliament.uk/pa/cm200506/cmhansrd/vo060720/wmstext/60720m0003.htm#06072031000418)

<sup>45</sup> Ibid.

<sup>46</sup> Department for Social Development. 'Liquor Licensing – The Way Forward' Analysis of Responses to Public Consultation. July 2006.

[www.dsdni.gov.uk/lrt\\_consultation\\_analysis.doc](http://www.dsdni.gov.uk/lrt_consultation_analysis.doc)



that the business impact assessment “*debunked some of the claims made during the debate which took place around my predecessor’s proposal to abolish surrender. It also demonstrated that it was not possible to obtain robust evidence on which to base firm conclusions regarding the financial effect, on current licensees, potential licence applicants or other stakeholders*”<sup>47</sup>.

## SECTION FIVE: OTHER KEY POLICY AND LEGISLATIVE ISSUES FOR CONSIDERATION

50. This section provides an overview of some other general issues which the Committee may wish to note including proxy purchasing, test purchasing, local licensing forums, and powers to seize alcohol. This section also provides a brief overview of some of the Scottish Government’s recent proposals for liquor reform, for example, the introduction of minimum alcohol retail pricing, further control of ‘irresponsible’ alcohol promotions, raising the minimum purchasing age in off-licensed premises to 21 and the introduction of a ‘social responsibility fee’ for certain licensed premises.

### PROXY PURCHASING

51. The ‘proxy purchasing’ of alcohol by adults on behalf of young people (aged under 18 years) is a significant problem and there are many approaches to tackling this issue with various degrees of success. For example, one recent scheme by the Newcastle (England) Safer Communities Partnership called ‘Operation Taps’ (Tackling Alcohol Proxy Sales) has received £15,600 funding from the Home Office to<sup>48</sup>:

- Use professional witnesses to monitor off-licences and supermarkets where police suspect ‘proxy buying’ take place. This includes on-the-spot fines (£80) for those adults engaging in this behaviour. The campaign will also involve Trading Standards officers.
- Educating shopkeepers, customers and parents about proxy purchasing; and
- Providing licensed premises with coloured carrier bags with a printed message about underage drinking.

Examples of other approaches to addressing the issue of proxy purchasing include:

- Patrols by Police and Trading Standards of areas where young people are likely to engage in underage drinking, this includes the confiscation of alcohol and informing the parent(s)/guardian(s) of the young people involved;
- Turning areas into ‘no go areas’ or ‘alcohol exclusion zones’ for drinkers, particularly areas in which underage drinkers are known to congregate (e.g. parks)<sup>49</sup>; and

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<sup>47</sup> See Northern Ireland Assembly Official Report, 17 November 2008.

[www.niassembly.gov.uk/record/reports2008/081117.htm](http://www.niassembly.gov.uk/record/reports2008/081117.htm)

<sup>48</sup> Alcohol Policy UK News. “Tackling Proxy Purchasing: Operation Taps, Newcastle.

[www.alcoholpolicy.net/2009/01/tackling-proxy-purchasing-operation-taps-newcastle.html](http://www.alcoholpolicy.net/2009/01/tackling-proxy-purchasing-operation-taps-newcastle.html)

<sup>49</sup> The Press. “New clampdown on teen boozing”. 15 April 2008.

[www.thepress.co.uk/news/2197289.new\\_clampdown\\_on\\_teen\\_boozing/](http://www.thepress.co.uk/news/2197289.new_clampdown_on_teen_boozing/)

- Targeting initiatives when underage alcohol consumption may be at its highest (e.g. Christmas, Summer recess, term time and half-term holidays, weekends).
52. Labelling off-licence carrier bags in respect of underage drinking is an issue which has been the subject of recent debate in the Northern Ireland Assembly (see [Official Report](#) for 1 April 2008)<sup>50</sup>. In answer to an Assembly Question, the Minister for Social Development identified two reasons why legislation would not be brought forward to ensure that off-licences displayed their shop name on carrier bags<sup>51</sup>. The Minister maintains that in the Republic of Ireland, where legislative provision to brand containers for drinks was introduced in 2003 (but never used), experience demonstrated that seeking to compel retailers to adopt such an approach raised difficult issues with regard to European human rights and competition rules. The Minister further maintains that there are issues around the rules of evidence in courts.

#### INTRODUCTION OF TEST PURCHASING POWERS IN NORTHERN IRELAND

53. Under Article 60(a) of the Licensing (Northern Ireland) Order 1996, persons under the age of 18 are permitted to enter licensed premises to purchase alcohol when sent into the premises by a constable acting in the course of his duty. This power is known as the 'test purchase power' and is designed to allow the identification of licence holders who fail to comply with the age restrictions on alcohol and other restricted products.

54. Article 60(a) places a number of requirements on the use of the test purchase power, i.e.:

- all reasonable steps must be taken to avoid any risk to the welfare of the person undertaking the test purchase exercise;
- both the person involved and their parent or guardian must consent in writing to participation in the exercise; and
- The Secretary of State is required to issue statutory guidance to the Police Service of Northern Ireland as to the exercise of this power. This statutory guidance was subsequently published by the Secretary of State in December 2008<sup>52</sup>.

55. The production of statutory guidance on test purchasing is the responsibility of the Secretary of State for Northern Ireland. On 2 December 2008, Criminal Justice Minister Paul Goggins, MP announced that it was his intention to shortly commence these new powers<sup>53</sup>. This move has been welcomed by the Minister for Health, Social Services and Public Safety who stated that, *"There must be rigorous enforcement of the law relating to underage alcohol sales...I therefore welcome today's announcement regarding the introduction of test purchasing powers in Northern Ireland. These powers will give the police greater*

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<sup>50</sup> Northern Ireland Assembly Official Report. 1 April 2008.

[www.niassembly.gov.uk/record/reports2007/080401.htm](http://www.niassembly.gov.uk/record/reports2007/080401.htm)

<sup>51</sup> Assembly Question for Oral Answer, AQO 2463/09. Tabled 16 March 2009.

<sup>52</sup> Northern Ireland Office (2008) The Secretary of State's Guidance on Test Purchase of Alcohol in Northern Ireland.

[www.nio.gov.uk/the\\_secretary\\_of\\_states\\_guidance\\_on\\_test\\_purchase\\_of\\_alcohol\\_in\\_northern\\_ireland.pdf](http://www.nio.gov.uk/the_secretary_of_states_guidance_on_test_purchase_of_alcohol_in_northern_ireland.pdf)

<sup>53</sup> Northern Ireland Office News Release. "Goggins welcomes launch of get home safe campaign". 2 December 2008. [www.nio.gov.uk/goggins-welcomes-launch-of-get-home-safe-campaign/media-detail.htm?newsID=15571](http://www.nio.gov.uk/goggins-welcomes-launch-of-get-home-safe-campaign/media-detail.htm?newsID=15571)

*opportunities to identify and punish those license holders who sell alcohol to minors. Anyone who is caught selling alcohol to under-age buyers must be dealt with by the full force of the law*<sup>54</sup>.

56. A number of general concerns have been expressed about the use of test purchasing powers with ensuring the safety and welfare of children participating in the exercise being one of the main issues. The Northern Ireland Assembly Ad Hoc Committee on the Draft Criminal Justice Order 2007 considered the issues of test purchasing as part of its consideration of the draft order and made a number of recommendations including<sup>55</sup>:

- That the PSNI should publish widely in advance that they will be using the test purchase power to detect retailers who sell alcohol to persons under 18; and
- That the PSNI should develop operation guidelines for personnel involved in the test purchase scheme which should address issues such as the ages of the young persons to be used and the need to ensure that their welfare is protected. The Committee further recommended that the guidelines should also make it clear that in no circumstances should a vulnerable young person be considered for the scheme.

#### LOCAL LICENSING FORUMS – COMMUNITY ENGAGEMENT ON LIQUOR LICENSING ISSUES

57. Local Licensing Forums operate in almost all council/local authority areas in Scotland, England and Wales. These forums are a means by which the local community can engage with licensing authorities on alcohol licensing issues which impact upon their areas. In Scotland, for example, the Forums consist of between five and 20 members, at least one of which must be a Licensing Standards Officer for that area. Each Forum must hold at least four meetings each calendar year. In appointing members to the Forum, the local council must ensure that membership is representative of certain interests including:

- Holders of premises or personal liquor licensing;
- Local police;
- Persons having functions relating to health, education or social work;
- Young people; and
- Other people resident within the Forum's area<sup>56</sup>.

#### PROPOSALS FOR ALCOHOL REFORM IN SCOTLAND

58. In March 2009, the Scottish Government published '[Changing Scotland's Relationship with Alcohol: A Framework for Action](#)' which outlined its proposals to tackle the issue of alcohol misuse in Scotland. The proposal included, for example, the introduction of minimum retail pricing; further control 'irresponsible' alcohol promotions; raising the minimum alcohol purchase age to 21 for off-sale

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<sup>54</sup> Department of Health, Social Services and Public Safety News Release. "Health Minister welcomes plans to introduce alcohol test purchasing powers". 3 December 2008. [www.northernireland.gov.uk/news/news-dhssps/news-dhssps-december-2008/news-dhssps-alcohol-test-purchasing-laws021208.htm](http://www.northernireland.gov.uk/news/news-dhssps/news-dhssps-december-2008/news-dhssps-alcohol-test-purchasing-laws021208.htm)

<sup>55</sup> Northern Ireland Assembly. Ad Hoc Committee on the Draft Criminal Justice (Northern Ireland) Order 2007. Report on the Draft Criminal Justice (Northern Ireland) Order 2007. [www.niassembly.gov.uk/adhocs/2007mandate/draft\\_criminal\\_justice\\_order2007/reports/repor\\_t14\\_07\\_08r.htm](http://www.niassembly.gov.uk/adhocs/2007mandate/draft_criminal_justice_order2007/reports/repor_t14_07_08r.htm)

<sup>56</sup> Information extracted from the Scottish Local Licensing Forum website - [www.local-licensing-forums.org.uk/home.html](http://www.local-licensing-forums.org.uk/home.html)

purchases; and the introduction of a 'social responsibility fee' for some licensed premises<sup>57</sup>:

THE INTRODUCTION OF MINIMUM RETAIL PRICING

59. The Scottish Government proposed linking product strength to retail price by establishing a minimum price for a unit of alcohol in a bid to reduce excessive alcohol consumption and alcohol-related harm. The Scottish Government hopes that this move will incentivise producers to develop lower strength products and reduce the availability of low cost drinks. It was also proposed that minimum prices should be set independently of those bodies connected either directly or indirectly with the manufacture, retail, supply or distribution of alcohol products.
60. The Scottish Government proposes to work with researchers and economists to consider the modelling work around specific minimum prices per unit of alcohol and to discuss with the UK Government arrangements for controlling pricing and promotions of alcohol bought remotely and delivered to Scotland from England and Wales or beyond.
61. In an analysis of consultation responses, nine out of ten (90%) health organisations supported the introduction of minimum pricing, as did eight out of ten (84%) local government bodies. Six out of ten (61%) trade and business sector organisations were opposed. Views amongst individual respondents were mixed, with 49% in favour and 43% against. Various reasons were given by those who expressed opposition including that minimum pricing was just another form of taxation, that it would impact upon responsible drinkers and people on low incomes and general opposition in respect of the Government setting prices<sup>58</sup>.
62. According to an article in the 'Scotsman' it is likely that the introduction of this policy will be delayed until next year. The Scottish Government had originally intended to introduce the policy by way of amendments to the Licensing (Scotland) Act 2005. However, the article maintains that the opposition parties have blocked this move and have instead encouraged the Government into introducing the proposals through primary legislation in order to facilitate closer scrutiny<sup>59</sup>. Questions have also been raised about the legality of introducing minimum pricing and whether it breaches EU competition rules. An article in 'The Times' reports that the Scottish Whiskey Association received legal advice that suggested that a minimum pricing scheme could be in breach of Article 28 of the EC Treaty which prohibits 'quantitative restrictions' on imported products. The Article states that<sup>60</sup>:

*"The Times yesterday revealed that Lovell's, a legal firm renowned for its expertise in EU law, believed that Brussels would interpret minimum pricing as giving a competitive advantage.*

*The association said that as long ago as 1978, the Court of Justice ruled that minimum retail prices for spirit drinks broke European law*

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<sup>57</sup> Scottish Government (2008) Changing Scotland's Relationship with Alcohol: A Framework for Action. [www.scotland.gov.uk/Publications/2009/03/04144703/7](http://www.scotland.gov.uk/Publications/2009/03/04144703/7)

<sup>58</sup> Ibid, Annex A.

<sup>59</sup> The Scotsman. 'SNP crackdown on discount alcohol is delayed by a year'. 11 March 2009. <http://news.scotsman.com/alcoholandbingedrink/SNP-crackdown-on-discount-alcohol.5058108.jp>

<sup>60</sup> The Times. 'Whisky Association against minimum pricing in Scotland'. 14 March 2009. [www.timesonline.co.uk/tol/news/uk/scotland/article5903064.ece](http://www.timesonline.co.uk/tol/news/uk/scotland/article5903064.ece)

*by preventing imported products from having the opportunity to compete with domestic products on the basis of a lower cost base.*

*The European Commission has since raised complaints on several occasions against EU member state plans to introduce minimum prices, with the Court of Justice finding schemes in relation to tobacco to be illegal.”*

#### CONTROL OF ‘IRRESPONSIBLE’ ALCOHOL PROMOTIONS

63. The proposals also include further action to end the promotion and ‘loss leading’ (i.e. below cost selling) of alcohol drinks in licensed premises (e.g. multi-buy, ‘buy one-get on free’, ‘three for the price of two’ offers). The Licensing (Scotland) Act 2005, which comes fully into effect on 1 September 2009, already sets out a range of ‘irresponsible promotions that will not be permitted from that date in respect of licensed premises. Most only have a practical effect on ‘on sales’ premises and it is anticipated that the proposals will bring off-sales into line with the restrictions already in place for ‘on sales’ premises.

64. Schedule 3 of the Licensing (Scotland) Act 2005 places the following restrictions on drinks promotions on on-sale premises. A drinks promotion is defined as ‘irresponsible’ if it:

- (a) *relates specifically to an alcohol drink likely to appeal largely to persons under the age of 18,*
- (b) *involves the supply of an alcohol drink free of charge or at a reduced price on the purchase of one or more drinks (whether or not alcohol drinks),*
- (c) *involves the supply, free of charge or at a reduced price of one or more extra measures of an alcohol drink on the purchase of one or more measures of the drink,*
- (d) *involves the supply of unlimited amounts of alcohol for a fixed charge (including any charge for entry to the premises),*
- (e) *encourages, or seeks to encourage, a person to buy or consume a larger measure of alcohol than the person had otherwise intended to buy or consume,*
- (f) *is based on the strength of any alcohol,*
- (g) *rewards or encourages, or seeks to reward or encourage, drinking alcohol quickly, or*
- (h) *offers alcohol as a reward or prize, unless the alcohol is in a sealed container and consumed off the premises.*

65. All clubs in Edinburgh city centre have already agreed to cease ‘irresponsible’ promotions ahead of the 1 September 2009 deadline under a group called ‘Unight’<sup>61</sup>. ‘Unight’ is a coalition of all Edinburgh’s nightclubs and entertainment venues working closely with Lothian and Borders Police. All clubs within the ‘Unight’ partnership have agreed to non-participation in a range of promotions including<sup>62</sup>:

- door admission promotions that include alcohol;
- promotional references that encourage excessive drinking;

<sup>61</sup> For further information on ‘Unight’ see [www.unight.org.uk/](http://www.unight.org.uk/)

<sup>62</sup> Scottish Government. News Release ‘Edinburgh clubs call time on irresponsible promotions’, 6 April 2009. [www.scotland.gov.uk/News/Releases/2009/04/06154417](http://www.scotland.gov.uk/News/Releases/2009/04/06154417)



- drink promotions that offer alcohol free or at a reduced price on purchase of one or more drinks;
  - drink offers that encourage additional drinking; and
  - alcohol drink vouchers.
66. The Scottish Government propose to draft regulations to modify Schedules 3 and 4 to the Licensing (Scotland) Act 2005 to:
- Put an end to off-sales premises supplying alcohol free of charge on the purchase of one or more of the product, or any other product, whether alcohol or not;
  - Put an end to off sales premises supplying alcohol at a reduced price on a purchase of one or more of the product, or any other product, whether alcohol or not;
  - Prevent the sale of alcohol as a loss-leader; and
  - Consult with the Scottish Government and Alcohol Industry Partnership and other key stakeholders on a regulatory impact assessment before laying draft regulations in Parliament.
67. An analysis of consultation responses highlighted that those respondents who did comment in detail generally expressed support for the proposal to end loss-leading/below cost selling rather than the restriction of promotions. There was a feeling amongst those who expressed opposition that these proposals would restrict choice and make responsible drinkers pay in order to tackle problems caused by an irresponsible minority of drinkers. Most of the organisations that supported the proposals felt that there was a direct link between availability of cheap alcohol and excessive/irresponsible drinking and consequent harm<sup>63</sup>.
68. The Home Office announced in December 2008 that the Government will seek to legislate to introduce a mandatory code of practice for retailers in England and Wales in relation to the responsible selling and marketing of alcohol. The Government will shortly consult on a range of compulsory conditions in relation to alcohol promotions which include<sup>64</sup>:
- Banning offers such as 'all you can drink for £10';
  - Outlawing pubs and bars offering promotions to certain groups, such as women only (e.g. women drink free nights);
  - Ensuring that customers in supermarkets are not required to buy large amounts of a product to take advantage of price discounts;
  - Requiring that customers are able to see clearly the unit content of when they purchase it;
  - Requiring bars and pubs to have the minimum sized glasses available for customers who want them.
69. The Government will also consult on stronger local powers for licensing authorities to tackle alcohol-related problems which could include:
- Limiting the sale of low price alcohol in an area if this is linked to local disorder;

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<sup>63</sup> Scottish Government (2008) Changing Scotland's Relationship with Alcohol: A Framework for Action, Annex A.

<sup>64</sup> Home Office News Release. 'Time's up for irresponsible drink deals'. 3 December 2008. <http://press.homeoffice.gov.uk/press-releases/irresponsible-drink-deals>

- Banning promotions such as happy hours, drinking games or pub crawls; and
- Placing limits on the display or advertising of discounted price offers.

#### RAISING MINIMUM PURCHASING AGE

70. The Scottish Government also proposes to raise the minimum legal age to 21 for off-sale purchases in a bid to tackle alcohol misuse amongst young people. The Scottish Government suggests that this may encourage more responsible drinking by continuing to allow access to on-sales premises and a supervised environment in which drinks measures are controlled.

71. The Scottish Government proposes to introduce legislation to:

- Place a duty on Licensing Boards to consider raising the minimum age for off-sales purchases within their area, or part of their area, to 21 when they are reviewing their licensing policy statements;
- Enable Licensing Boards to apply such a condition without requiring a hearing in respect of every premises concerned; and
- Giving the Chief Constable or the local Licensing Forum powers to request that their Local Licensing Board consider the matter of an age restriction at any time.

72. A majority of individuals (62%) responding to the consultation expressed opposition to the proposal to raise the minimum age for off-sales purchases to 21. The only sector that had a majority of respondents in favour was the health sector (52% in favour, 36% opposed). Almost all the trade and business sector respondents (87%) were against (with the notable exception of the Scottish Licensed Trade Association) as were all nine youth organisations that responded. The most common reasons that respondents gave for opposing the proposal were:

- that it would 'demonise' all young people and not just those who drink irresponsibly;
- that it represented an erosion of civil liberties for young people; and
- that the emphasis should be on enforcing current laws and using proof of age schemes to reduce under-age drinking<sup>65</sup>.

#### INTRODUCTION OF A 'SOCIAL RESPONSIBILITY' FEE

73. A social responsibility fee applied to some alcohol retailers to help off-set the costs of dealing with the adverse consequences of alcohol. The Government proposes that local authorities should determine how this money is spent according to local needs and priorities (e.g. identifying initiatives or projects which would assist in meeting the Licensing Objectives).

74. In an analysis of the responses to the consultation, opposition to the fee mostly came from the trade and business sector organisations with many stating that it would be 'just another tax', that it would tax the supplier of alcohol rather than those who were misusing it, and that it could penalise all traders to compensate for the small number who allow alcohol misuse to take place<sup>66</sup>.

75. There is a variation of a 'social responsibility fee' currently in operation in England and Wales through designated **Alcohol Disorder Zones (ADZs)**. Section 16 of

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<sup>65</sup> Ibid, Annex A.

<sup>66</sup> Ibid, Annex A.

the [Violent Crime Reduction Act 2006](#) permits local authorities (with the consent of the police) to designate areas as Alcohol Disorder Zones where there are problems with alcohol-related nuisance and crime and disorder. In order to pay for additional policing and other enforcement activities charges can be imposed on premises and clubs within the ADZ that sell or supply alcohol<sup>67</sup>.

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<sup>67</sup> Home Office. Alcohol Disorder Zones: A Short Guide to Setting Up and Managing ADZs. <http://police.homeoffice.gov.uk/publications/operational-policing/alcohol-disorder-zone-guidance1?view=Binary>



