

**CONSULTATION RESPONSE OF
JD WETHERSPOON PLC**

TO

**A CONSULTATION ON DELIVERING THE
GOVERNMENT'S POLICIES TO CUT ALCOHOL
FUELLED CRIME AND ANTI-SOCIAL BEHAVIOUR**

wetherspoon

Introduction

JD Wetherspoon PLC is one the leading operators of managed pubs in the UK. Established in 1979, the Company owns and operates 866 licensed premises throughout the UK and employs over 25,000 people. We are passionate about our pubs and are committed to providing our customers with good-quality food and drink served by well-trained and friendly staff at reasonable prices in safe and convivial environments. The pub used to be at the heart of the local community but many no longer have one. At a time when pubs are still shutting at the alarming rate, we are proud to contribute to the continued survival of this unique and cherished British institution.

We share the Government's objectives of encouraging both the responsible sale and consumption of alcohol and a continued fall in alcohol related crime and disorder, associated health harms and anti-social behaviour. We see the continued existence of the pub as a thriving institution, both socially and economically, as central to achieving those objectives.

By its nature the pub is a highly regulated environment. For centuries governments have recognised the need for the consumption of alcohol to be subject to legislative restriction and control. Increasingly in recent years, those who operate pubs have voluntarily seen the need to create an environment which is both convivial and safe in order to attract and retain a wide range of customers. CCTV is now almost standard in all pubs. Effective staff training to recognise signs of drunkenness is increasingly the norm as are proof of age policies to prevent under age sales of alcohol. The pub industry has also embraced the need to reduce the health harms associated with over consumption of alcohol. The Drinkaware Trust receives £5 million of funding from the alcohol industry each year to encourage responsible consumption through sensible drinking messages delivered in the pub itself through posters, beer mats and labelling, on the Internet and in the wider media. Initiatives such as Best Bar None and Pubwatch are industry led and along with Business Improvement Districts (BIDs) play a key role in creating a safer night time economy.

We acknowledge that responsible retailers in the off-trade match those in the on-trade trade in their commitment to ensure that alcohol is sold in a lawful and responsible fashion. However, once alcohol is purchased, they cannot exercise any degree of control over how, by whom and in what quantity that alcohol may ultimately be consumed. The pub can do all of these things.

Any solution to the problems identified in the Alcohol Strategy has to recognise the crucial role the pub has to play and not overburden it with regulations which will impact on good and bad operators alike. Indeed we strongly advocate the reduction of burdens wherever possible and welcome the opportunity the Consultation gives to outline specific measures to do that.

Question 1- Do you agree that this MUP would achieve these aims (i.e. be “targeted, proportionate whilst achieving a significant reduction of harm”)

We note that the government sees one possible benefit of the introduction of a MUP as a reduction in price disparity between alcohol available in the off trade and that available in pubs. This in turn will encourage more consumption in the regulated environment of the pub with beneficial health outcomes. Whilst as one of the first and leading exponents of responsible alcohol retailing in the pub industry, we are grateful of the government's recent recognition of the pub as place where alcohol can be consumed responsibly, we do not consider the MUP as capable of achieving this outcome. Instead the Government should urgently consider the levels of duty applied to the pub industry via the alcohol duty escalator which has seen consistent above inflation price rises of alcohol since its introduction in 2008 which the industry has had in large to pass onto its customers. Tax on a pint of beer alone has increased by 42% since its introduction. Unlike the off trade, specifically the large supermarkets, the industry is unable to offset the cost against other products as a means of minimise impact on the price to the customer leading to the significant and unprecedented price disparities evident today.

We would also ask the Government to consider the equivalent impact of the high levels of VAT paid by pubs if it wishes to encourage on-trade consumption. Greater parity in the level of VAT paid by the pub and hospitality industry as a whole would again go to cut the price disparity and contribute to a far greater extent to encouraging more consumption in pubs than the MUP.

Recent You Gov research has indicated that the MUP is extremely unlikely to change the drinking habits of those who choose to drink less at home by encouraging them to drink more in the pub. Only 0.36% said they would drink more in the pub as a consequence of the MUP. Only radical action to reduce the unfair tax burden on the pub industry will see a change in the dynamic of peoples drinking habits and the health outcomes the government wishes to achieve.

We do not consider the proposal as proportionate, targeted and likely to achieve its aims.

Question 2 - Should other factors or evidence be considered when setting a minimum price unit for alcohol?

There is currently an insufficient evidence base to support it achieving a significant reduction of harm. The University of Sheffield study on which policy is based is inconclusive. We note the statement in the impact assessment that a MUP has not been implemented in any other country and so consumer response is “uncertain” and that” estimating its impact is very

difficult” and “subject to considerable uncertainty”. The anticipated further modelling which the Impact Assessment indicated would be forthcoming during consultation has not so far appeared.

There is also insufficient evidence to suggest that hazardous and harmful drinkers are likely to change their habits rather than absorb the increase given the addictive nature of their drinking which the MUP does not target. The majority of studies indicate that it is moderate drinkers in contrast who are more price sensitive. We would support a more targeted approach via personal or education based interventions rather than the whole population approach underpinning minimum pricing.

It fails to differentiate between irresponsible drinkers and responsible drinkers. Those who purchase lower price alcohol not necessarily harmful or hazardous drinkers especially in current economic climate. The Impact Assessment acknowledges that those consumers most likely to be impacted are the older population, unemployed and those with lower levels of income, education and social class. The Government has repeatedly acknowledged most people consume alcohol responsibly therefore why punish them?

Question 3 – How do you think the level of minimum unit price set by the government should be adjusted over time?

We do not support the link to inflation. We would want a periodic review if the measure was introduced at all. We would suggest an initial review after 3 years not 5 as suggested in the Impact Assessment given the wide ranging impact of the measure and the uncertainty of the data supporting its introduction.

Any review should be measured against the stated objective of tackling dangerous and hazardous levels of drinking and not wider consumption of alcohol which is falling in any event.

Question 4 – Are there any other people, organizations or groups that could be particularly affected by a MUP?

The University of Sheffield research referred to in the Impact Assessment shows that population groups specifically affected are the older population, unemployed and individuals with lower levels of education, social class and income.

We note the CEBR study which concludes that “a minimum price of 45 pence has a significantly larger impact on expenditure, even in absolute terms, on the poorest 20% of households – it would be a highly regressive measure”

Question 5 – Do you think there should be a ban on multi-buy promotions in the off-trade?

The measure does have the potential to establish a more level playing between on and off trade given the on-trade is subject to mandatory conditions already restricting irresponsible promotions. We have however reservations about its likely effectiveness for a number of reasons.

It proposes no control on deep individual product discounting. There is therefore an ability for retailers to circumnavigate restrictions by reducing individual item prices to the same level of current multi- pack pricing.

There is also the likelihood that retailers will voluntarily restrict individual sales of certain products to allow unrestricted multi-pack pricing of that product. This has happened in Scotland.

There is also insufficient evidence to support the Government's intended impact without further research. In particular there is little direct evidence to establish the pattern of consumption once a multi- buy purchase made.

We do not consider the ban as likely to be effective in changing people's drinking habits .We refer to our answer to Question 1 as to effective action the Government should take to encourage consumption in the regulated environment of the pub if it does wish to change significantly the dynamic of individuals purchasing large amounts of discounted alcohol to consume at home.

Question 6 – Are there any other offers which should be included in a ban on multi-buy promotions?

Question 7 – Should other factors or evidence be considered when considering a ban on multi-buy promotions?

Question 8 – The aim of a ban on multi-buy promotions is to stop promotions that encourage people to buy more than they otherwise would, helping people be aware of how much they drink, and to tackle irresponsible sales. Do you think there are any groups that could be particularly affected by a ban on multi-buy promotions?

We would refer to our answer to question 5 above.

Question 9 – Do you think each of the mandatory licensing conditions is effective in promoting the licensing objectives?

We would consider the mandatory conditions to have been generally beneficial in promoting the licensing objectives.

Question 10 – Do you think that the mandatory licensing conditions do enough to target irresponsible promotions in pubs and clubs?

Yes. The conditions form part of wider range of enforcement tools, such as reviews for example, that the authorities can use to deal with promotions that do not promote the licensing objectives. As a responsible operator we have not found that any of our promotions have needed to be regulated under the conditions but have experience of them being utilised against competitors as a means of discouraging such promotions. Actual prosecutions are rare in our experience as usually the threat of action especially backed up via the possibility of a review is sufficient for the operator to withdraw any promotion liable to be in breach.

As a consequence we would not see a need for the conditions to be amended to define particular types of promotions as is the case in Scotland as we have heard suggested in some quarters. This has led us in certain areas not being allowed to promote to certain perfectly responsible offers such as a free drink with a steak or curry meal when such offers have caused no issue in England and Wales. The conditions as drafted allow discretion for authorities to target only those promotions which do undermine the licensing objectives

Question 11 – Are there any other issues related to the licensing objectives which could be tackled through a mandatory condition?

No. We believe the current conditions are satisfactory. The introduction of the mandatory conditions did lead to additional costs almost wholly for the on-trade sector. At a time when the Government is seeking to encourage more consumption in the regulated on-trade, then any further cost burden would run contrary to that objective. If the Government does think there are issues which might need addressing, although we can think of none, the best approach would be to do so on a local basis via voluntary initiatives and partnership working rather than more conditions. If these fail then premises specific conditions tailored to meet the circumstances of an individual premises can be applied. There is also the significant cost of reissuing licences if conditions are added to or changed.

Question 12 – Do you think the current approach with 5 mandatory conditions applying to the on-trade and only one applying to the off-trade is appropriate?

This is a difficult to answer without a proposal for a specific condition or conditions to redress the numerical balance. There is however a strong argument that there should not be such a disproportionate regulatory burden on one side of the drinks retailing sector especially when Government has increasingly come to see the benefits of alcohol being consumed in the controlled environment of the pub.

Question 13 – What sources of evidence on alcohol related health harm could be used to support the introduction of a cumulative impact policy?

We do not support the prevention of health harm as a licensing objective and have concern that this proposal may be a pre-cursor to that. Our objection to both proposals is simply the difficulty of deciding what, if any, health data can be linked to an either an individual premises or an individual area and therefore properly inform a licensing decision. Discussions with health professionals during the consultation process at Home Office events showed that they had similar concerns.

The Licensing Act 2003 process has quite properly always focussed on applying the necessary controls on individual premises based on the individual nature of those premises and how they promote or otherwise the licensing objectives. Health considerations are much more generally based and can only be effectively addressed at a strategic and policy level. The example of Scotland where forays into the licensing process by Health Authorities have been infrequent and largely unsuccessful notwithstanding that health is a licensing objective is indicative of this.

One clear obstacle is the difficulty of linking what evidence there may be of specific health harms in one area to alcohol purchased in that area given that the majority of alcohol is purchased away from where it is consumed. Of course there is then the further difficulty of linking where the health harms may present to the health authorities to both point of purchase and point of consumption.

Question 14 – Do you think any aspects of the current cumulative impact policy process would need to be amended to allow consideration of data on alcohol related health harms?

If the proposal is taken forward then the current evidential requirements before the adoption of a cumulative impact area must remain. The existence of a CIP represents a very significant obstacle for an operator who wishes to develop licensed premises given the need to show

that their application will not add to cumulative impact and the threshold for their introduction should remain high.

The s182 Statutory Guidance should state clearly that any data relating to alcohol related health harms must be linked to the specific area under consideration and data relating to wider regional or national trends in alcohol related harms should be disregarded.

Question 15 – What impact do you think allowing consideration of date on alcohol related health harms when introducing a CIP would have if it were used in your local area?

The general points made above would apply.

Question 16 - Should special provision to reduce the burdens on ancillary sellers be limited to specific types of business and/or be available to all types of business providing they meet certain qualification criteria for limited or incidental sales?

We do not support the concept of a relaxed licensing process for so called ancillary sellers. The sale of alcohol from whatever source, because of the nature of the product, carries with it inherent risk and it is right and proper that there is a rigorous licensing process in place to ensure the necessary safeguards are provided.

If it is the cost and complexity of the current licensing system that is causing disadvantage to commercial enterprises to which sale of alcohol would form a minor part of their business then consideration should be given to reducing those obstacles for all types of business and our suggestions for that follow later in our response.

If this proposal is carried forward then it should apply to an extremely limited specific types of premises where there is no danger of the licensing objectives being undermined. This would limit the risk that the proposal carries and cut down the difficulties in enforcement against a wider range of businesses based on minimum criteria at a time when enforcement resources are under pressure.

Question 17 – If special provision to reduce licensing burdens on ancillary sellers were to include a list of certain types of premises, do you think it should apply to the following?

We do not support the proposal and therefore will not respond to this question.

Question 18 – Do you have any suggestions for other types of businesses to which such special provision should apply without impacting adversely on the licensing objectives?

We do not support the proposal and therefore will not respond to this question.

Question 19 – The aim of a new ancillary seller status is to reduce the burdens on businesses where the sale of alcohol is only a small part of their business and occurs alongside the provision of a wider product or service, while minimising loopholes for irresponsible businesses and maintaining the effectiveness of enforcement. Do you think the qualification criteria in Para 9.6 meet the aim?

We do not support the proposal for the reasons set out in Question 16.

If the proposal is carried forward then either criterion seem impossible to properly monitor or enforce which will impact on the authorities, local communities and neighbouring operators.

Any provision for any ASN must allow it to be withdrawn on any breach requiring a full premises licence to be applied for. An ASN must be a privilege not a right and capable of being lost if abused.

The system should be self-funding and not subsidised by full premises licence holders.

Question 20 - Do you think these proposals would significantly reduce the burdens on ancillary sellers?

Whilst the proposals may result in a reduced burden in that they remove the requirement for a premises licence, any decision to take the proposal forward has to balance the reduced burden on so-called ancillary sellers with the increased burden on already stretched Licensing Authorities and Police in administering and enforcing any new system.

The burden in terms of potential increases in crime and anti-social behaviour on local communities when ancillary sellers do not sell alcohol in accordance with their permissions should also be taken into consideration.

Question 21 – Do you think that the following proposals would impact adversely on the premises licence objectives?

We consider proposal 1 and 2 as likely to have an adverse impact of the licensing objectives given the greater opportunity they afford for unregulated sale and indeed consumption of alcohol.

The proposal for certain types of premises to be allowed a premises licence without the need for a personal licence holder to authorise sales is already established under the Licensing Act 2003. If the Government is intent on reducing red tape for businesses where the sale of alcohol is ancillary then this is the least likely of the 3 proposals to have an adverse impact subject to the list of businesses being tightly controlled.

Question 22 – What other issues or options do you think should be considered when taking forward proposals for a lighter touch authorisation?

A prime consideration should be maintaining the integrity of licensing system to prevent disadvantage to those required to have a full premises licence. The vast majority of operators with premises licences, particularly in the on-trade, through voluntary measures or compliance with legislation, sell alcohol in a responsible fashion. New premises able to sell alcohol through a lighter touch authorisation should be subject to safeguards to ensure they do likewise.

Question 23 – Do you agree that licensing authorities should have the power to allow organisers of community events involving licensable activities to notify them through a locally determined notification process?

We have no particular view on this proposal but it is imperative that a uniform national system of TENs continues. We lodge a significant number of applications on a national basis for TENs for Christmas and other significant public holidays and having to negotiate through numerous different local systems would be extremely difficult, if not impossible, in the time frames allowed us.

Question 24 – What impact do you think a locally determined notification would have on organisers of community events?

See above.

Question 25 – Should the number of TENs which can be given in respect of individual premises be increased?

Question 26 - If yes, please select one option to indicate which you would prefer (15,18 or don't know)

We would support an increase in the number of TENs to 18.

The recent strengthening of the safeguards to the TEN process by allowing EHOs to lodge representations and for the carrying over of premises licence conditions mean an increase in the number of TENs available will not impact on the licensing objectives.

Question 27 – Do you think that licensing authorities should have local discretion around late night refreshment in each of the following ways?

We have serious concerns over any provisions for the relaxation of the licensing of late night refreshment apart from on a very limited basis to specific categories of premises.

Many of our premises are located in town and city centres near premises which supply late night refreshment and whilst the majority trade without incident, a proportion are a focus for late night noise and disorder and do require continued full licensing control.

Question 28 – Do you agree that motorway service areas should receive a nationally prescribed exemption from regulations from for the provision of late night refreshment?

We see no reason why this exemption should not be applied.

Question 29 - Please describe in the box below any other types of premises to which you think a nationally prescribed exemption should apply.

Though not part of this consultation specifically, we would also support an exemption for late night refreshment served during the hours authorised for the sale of alcohol on a premises licence. The need for this as a separate licensable activity causes undue complexity and confusion when applying for premises licences, variations and TENs. Those conditions regulating the much more impactful sale of alcohol equally apply to safeguard any impact on the licensing objectives from the sale of hot food and drink. We can think of no premises

licence in our estate where there is a condition specifically relating to the separate provision of late night refreshment as a licensable activity.

Question 30 – Do you agree with each of the following proposals?

Remove requirements to advertise licensing applications in local newspapers.

We wholeheartedly support this proposal which was part of the Elton Report in 2006. The cost to the industry for this requirement is significant. We lodge in the region of 125 premises licence applications in England and Wales each year. At a cost on average of £350 + VAT, this amounts to over £50,000.00 per year. If the application alters then further advertisement is often required.

There is little evidence to suggest that newspaper adverts have a wider affect in bringing applications to the public's attention than the notice which has to appear on the premises itself.

The requirement to advertise in the local paper in Scotland under the Licensing (Scotland) Act 1976 rested with the Licensing Boards and it is indicative that they lobbied successfully for it to be removed in the Licensing (Scotland) Act 2005 on the grounds of cost. Boards now can choose to advertise on their website if they wish in addition to the public notice they send to the applicant's premises for display. We have not noticed any difference to the number of residential representations we receive in Scotland under this system to that in England and Wales.

Remove the centrally imposed prohibition on the sale of alcohol at MSAs for the on and off-trade.

Yes. We see no reason why the decision as to whether a premise in an MSA should not be able to obtain a premises licence for the sale of alcohol should not be a decision of the local Licensing Authority based on whether or not the licensing objectives are promoted.

Remove the centrally imposed prohibition on the sale of alcohol at MSAs but only in respect of overnight accommodation.

We support a full removal of the restriction.

Remove or simplify requirements to renew personal licences under the 2003 Act.

The 10 yearly renewals will commence in 2015. It is estimated that over 400000 personal licences will require renewal in all over a relatively short time period. This will be a considerable cost and time burden on all involved in the process.

There is already an on-going requirement for personal licence holders to notify Licensing Authorities of any change of address so there is already an adequate mechanism for licences being kept up to date. In addition there is also the requirement for a court to notify the Licensing Authority of a relevant offence by the personal licence holder.

There is a suggestion that these elements of the system are not adequately adhered to. Some of the cost and time savings made by scrapping the need for the 10 year renewal could be applied to better understanding and enforcement of both.

Question 31 – Do you think that each of the following would reduce the overall burdens on business?

Remove requirements to advertise licensing applications in local newspapers.

Yes.

Remove the centrally imposed prohibition on the sale of alcohol at MSAs for the on and off-trade.

Yes.

Remove the centrally imposed prohibition on the sale of alcohol at MSAs but only in respect of overnight accommodation.

Not significantly.

Remove or simplify requirements to renew personal licences under the 2003 Act.

Yes.

Question 32 – Do you think the following measures would impact on one or more of the licensing objectives?

Remove requirements to advertise licensing applications in local newspapers.

No.

Remove the centrally imposed prohibition on the sale of alcohol at MSAs for the on and off-trade.

No.

Remove the centrally imposed prohibition on the sale of alcohol at MSAs but only in respect of overnight accommodation.

No.

Remove or simplify requirements to renew personal licences under the 2003 Act.

No.

Question 33 – In addition to the suggestions outlined above, what other sections of or processes under the 2003 Act could in your view be simplified in order to impact favourably on businesses without undermining the statutory licensing objectives or significantly increasing burdens on licensing authorities.

We welcome this opportunity given that the majority of measures which have been outlined previously in the Consultation have not been geared towards premises subject to mainstream licensing regulation and will therefore have limited practical and commercial impact for most licensed operators.

Our proposals are as follows:

Single due date for annual fees.

We have over 800 premises in England and Wales subject to payment of an annual fee. The absence of a single uniform date causes significant operational difficulty and anxiety compounded by a lack of a uniform billing and payment system amongst the Licensing Authorities themselves.

This is in comparison to Scotland where all premises licences fees are payable on the 1st October each year. This allows both operators and the Licensing Boards certainty around which they can plan resources accordingly.

A similar process needs to be instigated in England and Wales without further delay especially as now non-payment brings automatic suspension of the premises licence.

It was a recommendation of the Elton Report and has been top of the industry's "wish list" for implementation for several years with no progress to date.

Obligation on Licensing Authorities to accept electronic applications and credit card payment.

Increasingly commerce is moving towards paperless and cashless transactions and it would be helpful for all stakeholders in the licensing process if the above was a requirement. Many Licensing Authorities do facilitate both but a significant number still do not.

Express statutory provision for Licensing Authorities to amend an application and grant under delegated powers after agreement on conditions between applicant and Responsible Authorities.

Currently most Licensing Authorities in circumstances where a representation from a responsible authority is withdrawn on agreement to conditions by the applicant will allow the operating schedule of the application to be amended and the premises licence be granted administratively if there are no other outstanding representations.

A significant number of Licensing Authorities however insist that they cannot legally do this and refer the application to a Licensing Committee hearing for "rubber stamping". This is an unnecessary cost to the Licensing Authority and causes delay to the applicant. It would be very helpful if the Act was amended accordingly to make clear there is no need for this.

Simplification of the licensing forms so that the only parts which need to be submitted are those which relate to the application.

Currently the vast majority of the application form for a new premises licence or variation for an average pub premises is returned blank given that only one or two licensable activities will be relevant. The Regulations and forms should be amended so that they only provide for sections relevant to the application to be included.

Removal of the requirement that there has to be a 24 hour gap between TENS

Under the Licensing Act 1964 there were a number of mechanisms whereby a premise that for whatever reason could not trade under the provisions of a full premises licence could do so under temporary provisions whilst a full licence was either granted or restored.

Those temporary provisions were simplified and incorporated under the TEN system in the Licensing Act 2003 but the requirement for a 24 hour gap between TENS mean that any premises has to endure a 24 hour break in trading before the next TEN comes into force.

Examples were a premises might wish to rely on a series of TENS pending grant of a premises licence under the Act may be where for example a premises licence has automatically lapsed on the death of the holder or insolvency where the necessary notification has not being given.

Consideration should be given to allowing continuous TENS for a maximum period of 2 months. There are sufficient safeguards now built into the TEN process to ensure the licensing objectives are not undermined.

Conclusion

We hope that our response has been helpful. We reiterate that that we see the pub as being central to the responsible consumption of alcohol in the country. It is a regulated environment where the drinker is subject not only to legal and physical controls on how much alcohol he or she may consume but also social control. Any measures which the Government may introduce to advance its Alcohol Strategy should not undermine that crucial role and moreover encourage it.

The Government should also recognise that with the majority of alcohol being purchased from the off trade for home consumption, any measures designed to encourage the responsible sale and consumption of alcohol and a continued fall in alcohol related crime and disorder

and associated health harms which do not reflect that reality will not adequately achieve their objective.

The Government must look outside the Alcohol Strategy and consider the negative impact on the nation's drinking habits the increasing price disparity between alcohol available in the off trade and in the on-trade has caused. It must then address the underlying reasons for that disparity namely unequal VAT treatment and the ever increasing tax burden of the alcohol duty escalator.

We would of course be more than happy to have further & more detailed discussions with you regarding the issues we have raised and the relevant contact details are below.

