

Dear Sirs

We write this email in response to the Government's request for comments upon its consultation document and would be grateful if the comments herein could be taken into account in reaching any final decision.

This firm has for many years acted on behalf of all sides of the industry and individual directors and fee earners have a combined experience of nearly 100 years in licensing law and practice. We have acted for large and small operators in the pubs, bars, restaurants, nightclub, sports grounds, music festivals and hotel sector. We have also acted for local residents groups and local authorities.

The Strategy

The consultation document expresses a desire to continue the work in tackling the "drink-fuelled antisocial behaviour and crime blighting our communities." However, we would ask how the government intends to measure this outcome. What criteria will be used?

Notwithstanding the proposals in this document it is clear that drinking amongst young people, which the document claims to be vulnerable, is down markedly since 2001 and that alcohol-related crime is also down on the latest government figures. A recent report published on in 29th January 2013 by the Office for National Statistics also indicates that alcohol-related deaths in the United Kingdom are continuing to drop reflecting a trend which has taken place over the last 7-8 years.

On top of this statistics show that over a billion units of alcohol have been taken out of the system without these measures.

The emphasis should be on the responsible sale of alcohol in the off licence and supermarket sector given that regulation has for too long been focused on the hard pressed on trade.

Questions 1 to 4

The questions are phrased in such a way that the government intends to introduce minimum unit pricing for alcohol, come what may. The first question asks about the level of minimum unit pricing and whether another level should be set above and beyond the 45 pence per unit price suggested.

However, the question remains as to whether any form of minimum unit pricing, notwithstanding its lawfulness which is currently under challenge in Scotland and in Europe, would result in a reduction of drink-related crime and antisocial behaviour by pricing certain people out of the market.

We do not believe this to be the case.

The government refers within its impact assessment to a survey carried out in Canada which concerned an increase in the minimum price of alcohol rather than a minimum unit price and indicates that in this survey it was shown that consumption declined by 14-16% but does not say if resort was had to any other substances harmful to health such as tobacco and illegal drugs. The assessment notes rightly that no country on Earth has yet introduced a minimum unit price for alcohol and so the policy it has not properly been tested anywhere and accordingly the conclusions drawn from one limited survey in Canada must remain suspect.

What is clear is that an absolute prohibition on the sales of alcohol as took place in the United States immediately after the First World War up until 1930s did not substantially impact on alcohol consumption because no matter how many controls were in place to prevent alcohol coming into the United States, none of them were successful and almost as many people had access to alcohol at the end of prohibition as before. This related to a total ban on alcohol sales let alone a minimum unit price of 45 pence per unit. There was also little evidence of any decline in alcohol related health harms.

It is further suggested that those who are alcoholics (another group which the government intends to protect) would reduce consumption because the availability of cheap alcohol such as vodka or value whisky would decline as a result of the increased price. However, it shows no regard to the fact that committed alcoholics will find access to any kind of alcohol to feed their addiction and one then ends up penalising poorer members of society who drink responsibly but cannot afford more expensive alcohol. It is not therefore agreed that a minimum unit price would work at the levels suggested. It would probably work at substantially higher levels but then one would be cutting out of the market the many responsible drinkers to which the government makes reference in its introductory remarks. It would lead to the same arguments set out above with regard to prohibition in the US.

If the government is determined to introduce a minimum unit price for alcohol then we would suggest that it remain at the same level without adjustment over time. The provision could be made for a review of both the policy and the level at some point in the future. Once an assessment of the effectiveness or not of the policy has been carried out then future levels should be set in accordance with that determination. Automatic increases of the minimum unit price are indiscriminate and should only be in response to on-going problems experienced.

Multi-buy promotions – questions 5, 6, 7 and 8

The proposal for a ban on multi-buy promotions in supermarkets and the off trade generally is to be welcomed to the extent that it might contribute to a more level playing field, vis-à-vis the on trade which cannot compete on price with supermarket charges in respect of spirits and lagers. However, it is rather difficult to see how a ban on offers “2 for the price of 1” or “3 for the price of 2” would assist when there is no similar ban on half-price offers and “1/3 off” offers. The consultation document envisages that the latter will be free from regulation but the former will not. Surely, those intent on buying cheap alcohol will happily pay for 6 half-priced bottles of wine or cans of lager if this were permitted and it is not clear how the mischief which is sought to be remedied by the government in this respect can be achieved. A “buy 1 get 1 free” offer would surely be the same as a “half-price offer” on two bottles or cans.

If the aim is to prevent antisocial behaviour and crime and disorder caused by the provision of cheap alcohol, then it is not quite clear how the matters set out in the second column of the diagram on page 21 are any different to those set out in the first column.

Mandatory conditions – questions 9, 10, 11 and 12

We would not suggest the amendment to, or addition to, any of the mandatory conditions as currently set out on premises licences. Even though the enforceability of some of the conditions is in question (a matter which was pointed out to the Home Office at the time), it is submitted that such

conditions have at least focused licence holders' attention on those matters which could encourage irresponsible drinking within their own establishments. Premises licence holders now have to question whether a particular offer or promotion is "irresponsible" in the words of the condition and this has contributed to the reduction of some of the offers which existed a few years ago. The practice of dispensing alcohol directly into the mouth appears to have only been taking place at a few establishments within England and Wales and it is not clear what effect this condition has had, if any.

It is submitted that free tap water was always available at the vast majority of licenced premises but this condition simply emphasises the need for that to be the case across the country.

There can be no objection to the current age verification condition and the mandatory provision in respect of small measures is sensible. However, in respect of the latter it is not suggested that the government should go any further with respect to small measures as this would impose a further significant burden on hard-pressed premises licence holders changing menus and bar lists which resulted following the last change.

There should be no further mandatory conditions and this should be left to local licensing authorities as the circumstances of each individual case require.

Finally, it is submitted that it is inappropriate that only one of the mandatory conditions relates to the off trade whilst all relate to the on trade. It would be sensible to ensure that the off trade is subject to more of the mandatory conditions particularly with regard to irresponsible promotions.

Health as a licensing objective for cumulative impact policies – questions 13, 14 and 15

It would appear that the introduction of a "health objective" within the process for consideration of a cumulative impact policy is fraught with difficulties because it is difficult to see how a local authority can gather the evidence to indicate that there is a specific problem with regard to alcohol related health in a particular street or blocks of premises within its area. It is difficult to see how such evidence can be specific to the existence of licenced premises in one particular street. Cumulative impact policies, of course, relate to groupings of streets or blocks of buildings and so the introduction of a health objective (notwithstanding the doubtful legality of cumulative impact policies in the first place) would cause untold problems.

It is difficult to see who could provide this information in any event.

Experience has shown that where such evidence is placed before licensing committees it has had no relation whatsoever to the particular single application before that committee. For example, we have experience recently in a London borough of evidence being produced by an area health authority through the police authority relating to instances of problem drinking alcoholism in California in 1950s and Australia in 1980s as well as the Nordic countries in 1990s. However, it was entirely unclear how this related to an application to serve alcohol for one extra hour up until 02:00 in an already well-established licenced premises that served a maximum of 40 people at any one time.

Accordingly, with the legal proviso about cumulative impact policies being taken into account, we would suggest that before any health criteria can be used in formulating such a policy it needs to be specific and particular to the area in question and it is difficult to see how such evidence can be gathered in the first place.

At question 14 the consultation asks whether any “aspects of the current cumulative impact policy process would need to be amended to allow consideration of data on alcohol-related health harms”. However, it is not clear what is meant by this given that cumulative impact policies are not creatures of statute and no such processes are laid down by statute and any reference in the Guidance is questionable given this fact. What policy processes is the question referring to that needs to be changed? This is not clear.

Finally, the introduction of an alcohol-related health harm consideration when introducing cumulative impact policies can only lead to woolly and ill-defined policy making. As indicated above it is difficult to see how such information can be gathered in the first place and it is likely that if such information is of a generalist quality then politically elected members may seize upon it to introduce a policy in the area without serious thought. One would then have the situation where it would be possible to challenge the policy on this ground at every licence committee hearing in respect of individual premises and wasting everybody’s time. There is also the risk that such an introduction would increase the height of the bar over which applicants have to jump and it is already very high in respect of existing cumulative impact policies.

In short, the introduction of a licensing objective relating to health in the formation of cumulative impact policies is opposed.

Freeing up responsible businesses

Ancillary sales of alcohol – questions 16, 17, 18, 19, 20, 21 and 22

Any proposals by the government to free up businesses from red tape and excessive burdens of regulation are to be welcomed. It is all very well having a list of various types of premises who might provide alcohol to their customers such as hair and beauty salons, florists, art galleries, cinemas and museums as well as charitable events. However, in doing so, the government should be wary of introducing inequalities between these kind of operators and legitimate operators of small premises. The government should ensure that these kind of operators are providing alcohol on an infrequent basis otherwise there would be no reason why they should not be required to apply for a premises licence or even a temporary event notice in the normal way.

Community events – questions 23 and 24

The government should think carefully with regard to deregulating licensable activities at so-called “community events” as it is very often the case that those running such events have little or no experience of the licensing trade or of the rules that apply and very often have no idea how to resolve instances of disorder caused by drunken behaviour at such events. The government should, accordingly, tread warily in respect of de-licensing such activities in circumstances where those running them have very little experience or knowledge of the law or in how to deal with situations arising via drunkenness.

However, to the extent that the proposed reform assists local charitable groups and old age pensioners groups to hold events without having to go through a cumbersome and costly bureaucratic process of applying for a licence it is a useful one.

Extension of temporary event notice limits at individual premises – questions 25 and 26

We have no hesitation in suggesting that the number of TENs which can be given in respect of individual premises be increased to 18. The government is correct to say that the process is now subject to scrutiny not only by police but by Environmental Health officers and, furthermore, conditions may be added to notices.

Late night refreshment – questions 27, 28 and 29

Any deregulation of this sort which assists mostly small businesses is to be welcomed.

However, the preferred approach would be for exemptions to be laid down at the national level under the Licensing Act 2003 rather than have a mix of 600-odd local licensing authorities schemes which would provide no consistency across England and Wales.

It is certainly agreed that motorway service areas should have a nationally prescribed exemption from the late night refreshment provisions as these are not related to specific problems of crime and disorder and antisocial behaviour in town centres. Furthermore, these latter premises are required by law to provide hot food between the hours of 11pm and 6am.

Advertising in local newspapers – question 30

The removal of this requirement is to be welcomed as evidence shows that virtually nobody finds out about a licensing application from the very small print in a local free-sheet. The vast majority of people find out by way of notices on the premises and also by notifications by local authorities where this happens and on the internet. The removal of the requirement to advertise in local newspapers would save many millions of pounds to the industry.

Remove the centrally imposed prohibition on the sale of alcohol at motorway service station areas for the on and off trade

This is agreed and we believe that the removal of this prohibition would have no impact on the licensing objectives.

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

This is also agreed as an eminently sensible step. It is clear that in the run-up to 2015, which will be the 10th anniversary of the issuance of personal licences, upwards of almost 400,000 renewals will be inundating local licensing authority offices and the Criminal Records Office all at the same time. At a time when local licensing authorities are faced with losing staff and are hard pressed, it would seem unduly burdensome to expect them particularly in highly populated areas to process thousands of such applications in the weeks and months following the renewal date.

It would also remove a significant cost element to those companies which currently pay for their employees personal licence.

We do not think that the removal of the requirement to renew the personal licence will have any adverse effects upon the licensing objectives and the government is not proposing to remove the existing controls that remain in place with regard to personal licences.

