



Commission on Liquor Licensing

Interim Report on Off-Licensing

May 2001

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Commission on Liquor Licensing

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Introduction

The Minister for Justice, Equality and Law Reform announced the establishment of the Commission on Liquor Licensing on 1 November, 2000. For a list of the Commission members and personnel see Appendix 1. The Commission's terms of reference were set by the Government and appear in Appendix 2.

Under Term of Reference 6, the Commission is required to produce its final Report within two years of its first meeting. However, Term of Reference number 3 imposes an obligation on the Commission to report on its examination of the nature of the off-licence and the method of access to the off-licensed trade in the interests of promoting better competition, within 3 months of the first meeting of the Commission which took place in December 2000. This placed a time constraint on the Commission which, having regard to certain logistical difficulties, proved extremely difficult.

To assist its review of the off-licensing sector, the Commission advertised in the national press inviting submissions from interested parties. As a result, the Commission received over 30 submissions from private individuals and many from organisations and other bodies some of whom wished, in addition to making written submissions, to make oral presentations to the Commission. Despite the time constraints under which the Commission was working it acceded to the requests made and held a number of oral hearings which were attended in general by all the members of an off-licensing subcommittee. For a list of the parties who made written submissions see Appendix 3 and for those who made oral presentations see Appendix 4.

The Commission would like to express its sincere gratitude to all who made written submissions and to all who made oral presentations. Many of these submissions came from private individuals who had deep rooted views on the problems confronting the Commission. We were conscious of the depth of feeling that lay behind many of them. When private individuals make known their views on these matters those views should be given the greatest consideration. Every submission received was circulated to all the members of the Commission and many of them were individually discussed by a subcommittee dealing with off-licensing arrangements and the same applies to a subcommittee dealing with age cards. (Appendix 5) The submissions and the presentations proved helpful in enabling us to prepare this interim report.

Of the submissions received by the Commission, a large number were concerned with the consequences of increased availability of off-licences for the under-age drinking problem. The Commission was at all times conscious of this and bore in mind that if extra licences were to be made available additional safeguards for young people should be urgently put in place. The Commission was most concerned about the absence heretofore of a cohesive policy dealing with under-age drinking (N.B. The Commission's concerns in this regard were voiced long before recent comments on under-age drinking were reported in the press).

To assist in its endeavours the Commission set up two subcommittees: the first to deal with the substantive issue of off-licensing and the second to deal with the problem of under-age drinking through a system of age cards for young people. This was a problem well recognised by the Commission as demonstrated clearly from many of the submissions which were made.

The Commission also sought information about the operation of off-licensing controls in other jurisdictions and would like to acknowledge with gratitude the assistance received from authorities in the Australian State of Victoria, in England, Scotland, Finland, the Netherlands and many other countries.

The Commission noted that its terms of reference required the examination of off-licensing to be conducted “in the interest of promoting better competition”. Thus, the Commission had its duty to balance public protection against alcohol harm and, of course, against under-age drinking and the public benefits perceived from improved competition.

The Commission was anxious to provide safeguards to limit, so far as was possible, under-age drinking. While there is a general presumption that an increased number of outlets will lead to increased under-age drinking, if young people wish to procure alcohol it is clear that under the present system they can do so almost at will.

There was unanimity among the Commission members regarding the need to protect the public against alcohol harms and particularly young people from the evils referred to above. A further problem was highlighted in a Prime Time programme identifying excessive drinking by young people who had attained the age of 18 and are therefore now enabled, by equality legislation, to obtain alcohol without any form of supervision. (This programme appeared shortly after the formation of the Commission and emphasised for the Commission the problems which lay ahead.) There is, therefore, ample evidence that even at that young age many young people drink excessively. The Commission feels very keenly its role in protecting the public against these difficulties. The problem of alcohol and young people (18 years and upwards) is very serious and will be addressed by the Commission later.

The Commission would like to emphasise that this Interim Report is being provided against a background of time constraints and other logistical problems. Therefore, this Interim Report will not conclude the Commission’s involvement with the off-licensing trade.

There are a number of issues common to both off-licensing and on-licensing and as our review proceeds in other areas we may well find reason to revisit certain aspects of off-licensing.

The Nature of the Off-Licence

The word “off-licence” is a generically accepted term. The law relating to excise licences for the retail sale of intoxicating liquor off the premises is contained in a summary provided for the Commission by James Woods, the well known author of *Liquor Licensing Laws of Ireland*. (Appendix 6) The Commission is grateful for the availability of these texts and also the *Licensing Acts 1833 to 1995* by Constance Cassidy. Without authors of such clarity as these the Commission’s task in working through the morass of licensing laws would have been much more difficult. At present each type of off-licence is generally only capable of authorising the sale of the liquor named. However, a beer retailers off-licence permits cider as well as beer to be sold.

In practice an off-licence at present consists of one of two types:

A full off-licence such as one finds in stand-alone off-licence premises or in supermarkets and which permits the sale of the full range of intoxicating liquor. These licences are found almost exclusively in areas of large population. To acquire these it has heretofore been necessary to procure the extinguishing of an existing licence which, by virtue of the Intoxicating Liquor Act, 2000, can be anywhere in the Republic. Such spirit/beer retailers off-licences are obtained from the Revenue Commissioners but require the production of a District Court Certificate of entitlement to obtain the licence. To obtain such a licence at first instance it is necessary for the applicant, having served notice on various parties, to prove that he or she complies with the conditions for granting a new licence certificate. Thus, if a person wishes to obtain a licence to operate a standard off-licence facility they have the choice of procuring the extinguishment of either an existing off-licence or a full publican's licence (which is the licence normally used).

In addition, the applicant for a new licence must be able to overcome any objections that may be made under section 18 of the Intoxicating Liquor Act of 2000.

Once granted by the District Court the applicant presents a Certificate to the Revenue Commissioners who must issue a spirit retailers off-licence and a beer retailers off-licence.

A second type of licence is a wine-only off-licence which is not part of a Court procedure at all and merely requires an application to be made directly to the Revenue Commissioners for such licence. The issue of such has now become a formality. Oddly and perversely an objection is not possible to the granting of such licence. A wine off-licence does not require an application for a District Court Certificate. The Commission is of the view that, as in the case of almost all other applicants for new licences, applicants for wine off-licences should be required to present appropriate court certificates to the Revenue Commissioners for the issue of new wine off-licences.

Freeing up of dormant or unused licences

A liquor licence is a permission to trade. This gives to the licensee, subject to the law, the right to sell from his or her premises intoxicating liquor. It must be appreciated, however, that the issue of such licence carries with it responsibility to trade. Indeed, the Courts have ruled that a licence is not just a permit to trade but also creates an obligation to so do. There is evidence before the Commission to show that a large number of licences are completely dormant in that while they are renewed, the licensee does not from year to year carry on any form of business. This is contrary to the law and should be immediately redressed. Section A of the Commission's recommendations indicates how the Commission feels this should be dealt with. This recommendation should act as a warning to all those holders of such dormant licences that they should immediately dispose of them or reopen for *bona fide* trade. If they do not do so then the licence should not be renewed and should not be capable of being reinstated.

At present, there exists a system whereby licences which are not renewed can within a time limit of 5 years upon application to the Circuit Court be effectively reinstated. The Commission feels that this keeps in existence any licences that are not being used and thus licences in which the licensee has not carried out his or her responsibilities by indulging in *bona fide* trade. This 5 year moratorium should be withdrawn, save where exceptional

circumstances exist, i.e. death or serious illness of licensee, a *bona fide* scheme of reconstruction, etc..

The purpose of this recommendation is that licences can no longer be held *ad infinitum* for speculative purposes. Persons who wish to sell them should be afforded an immediate opportunity for doing so. In the alternative, they can open *bona fide* for trade. Such dormant licences should not in their present state be capable of being renewed.

The effect of this should be to free up and put on to the market place a substantial number of licences which will have the effect of reducing, what seems to the Commission to be a largely artificial value of such licences.¹

Under-age drinking

The Commission received a very large number of submissions from private individuals expressing serious concern about the present scale of under-age drinking and about the consequences of increased availability of all forms of alcohol.

The Commission was examining this long before recent Ministerial comments. A submission from the Department of Health and Children stated that “In a comprehensive review of the research, Edwards et.al (1994) concluded that when alcohol is less available, less convenient to purchase or less accessible, alcohol-related harm is lowered”.

The Competition Authority itself (and it favours considerable liberalisation of the industry) says “If we accept that a minor has a certain likelihood of successfully purchasing alcohol at any given off-licence then a greater number of off-licences in a given area implies a greater likelihood of eventual success in terms of the minor obtaining alcohol illegally”. We appreciated both the accuracy of that statement and the balanced approach to our role that it exhibited and agree with the Competition Authority that this underlines the need for the strictest enforcement of the law.

A submission from ASTI (Association of Secondary Teachers, Ireland) indicated that in the 80’s alcohol use among the young people of Ireland was moderate compared to other countries (Morgan & Gible ‘89). However, recent statistics suggest that Ireland now has among the highest rates of alcohol use in Europe among young people. It also has the highest rates of binge drinking. Ireland, therefore, has gone from a position of moderation to being top of this unwholesome league in the present licensing regime and this the Commission feels it must address.

What went wrong? ASTI highlighted the fact that young people have more disposable income and that designer drinks for young people are very blatantly advertised. The issue of advertising, is one which the Commission will take up later. There are two further matters on which the Commission places great emphasis – the absence of parental control and the absence over a long period of years of a focused educational policy dealing with alcohol abuse.

¹ A number of Commission members expressed some scepticism about this recommendation in that its effects are unpredictable and will take some considerable time to become apparent. Accordingly, while not disagreeing in principle that unused licences should be withdrawn, they did not consider that the recommendation constituted an adequate response to the need to free up access to the market.

Under-age drinking has been with us for many years. The parents' bodies who made presentations to us underlined the absence of education for the young on this sensitive problem. It is clearly within the home that young people must learn their approach to the problem that alcohol creates, nonetheless the education authorities have had over the years a major role to play.²

It has now become clear that under-age drinking is not merely a health but also an educational and indeed a national problem. For that reason, we are making many recommendations which we trust will be speedily implemented to rectify the situation. While the benefits of a comprehensive alcohol educational programme are largely untried nonetheless the cost of alcoholic excess in this country is estimated at £1.7 billion and it is surely in the country's best interests that relatively modest amounts of money should be spent to correct this unhappy situation.

The parents' organisations indicated to us that there was little or no education given to their children at school relating to this problem. The anecdotal evidence received from many teachers revealed that, heretofore, alcohol education has not formed part of the school curriculum and that where teachers were undertaking training to deal with alcohol and other substance abuse, they had to do so in their own free time. Inservice training, ASTI advise us, would benefit all teachers and enable them to recognise and address such alcohol issues as arise in schools.

The cost of a coherent policy in this regard would be nothing compared to the savings shown in the health of our young people and it is to these young people that a great duty is owed. Alcohol abuse can lead to other associated problems among young people in areas such as sexual behaviour and the driving of motor vehicles.

Our recommendation in this regard is for the immediate setting up of a strategic task force to assist in dealing with alcohol related problems. That strategic task force should include medical and educational specialists, members of the Garda Síochána and other bodies well versed in dealing with this problem and should include a representative of the trade and should be given the broadest possible mandate and adequate funding to address the problem. The strategic task force envisaged would be along the lines of the High Level Group on Road Safety assigned by Government to prepare the Government Strategy for Road Safety 1998 – 2002 and to monitor the implementation of that Strategy and ensure the achievement of its targets. Such a body to advise on alcohol policy exists in Scotland where, it is understood, it is very effective. As stated, the Commission considers that such a strategic task force should be set up as a matter of considerable urgency.

We were relieved by the production, by the Department of Education and Science, of a programme for secondary school children called "On My Own Two Feet" – a very worthwhile programme. However, this programme is intended for young people's general health awareness, realisation of human dignity etc. and while this encapsulates alcohol abuse this is not its main focus. The Commission is aware that the Department has commenced the introduction of Social, Personal and Health Education (SPHE) into primary and post-primary schools reflecting the WHO European Alcohol Action Plan 2000 – 2005. We believe that an immediate training programme should be put in place under the office of the Departments of

² Mr. Christopher McCamley, Department of Education and Science has pointed out that the National Parents' Council – Primary also emphasised the lack of leisure facilities available for young people.

Education and Science and Health and Children for the education of young people on a mandatory basis as part of the school curriculum.

We further recommend that the Department of Education and Science focuses on parent teacher bodies in each individual school and where necessary provides such assistance, financial or otherwise, to enable them to embark on a policy in this regard. Each school should have a policy and that should be made known to the Department. Each school should have an alcohol abuse programme as part of its regular curriculum. It should not be done on an *ad hoc* basis. The Commission feels that a mandatory system should be introduced by the Department without any delay and put into effect forthwith.

The Commission believes that the advertising standards and codes which pertain to the drinks industry should be rigorously enforced and any breach thereof carry serious sanctions. The Commission intends to revisit this issue.

The penalties for selling to under-age children and assisting the under-aged in getting drink should be kept under constant review. Additional enforcement procedures by the Gardaí were highlighted by many of the submissions to the Commission.

A statutory age card has been in existence for some years but the Commission believes that it has not been sufficiently publicised or promoted. The result is that the take up of the card has been limited. There is a fee payable for it. It can hardly be said to be in general use.

The Commission strongly recommends that an age card in tamper proof form be made available to young people. Many members of the Commission felt that such an age card should be made compulsory but there appears to be some sort of reluctance in the country at the moment to accept this. Nonetheless, the Commission urges that the age card be made available at no charge whatever, and that it be the only acceptable evidence that persons holding that card are entitled to be served with intoxicating liquor. It would not, therefore, be obligatory on any young person to get such card but if he or she did not get it they would be unable to purchase alcohol. Such card would also have, of course, a major role to play in gaining admission to night clubs, discos and even proof of age for seeing certain films. The licensed trade associations have long campaigned for such a card as a means of reducing the under-age drinking problem. The Commission felt that application forms for such cards should be widely available and where appropriate through schools or through third level education institutions. While the Department of Education and Science supports the use of the age card, it is reluctant to accept this, believing that to assist the distribution of such age card might be interpreted as effectively giving 18 year olds permission to consume alcohol.³ This is not how the remainder of the Commission saw it. The Commission saw it as a serious effort to combat under-age drinking. We therefore recommend the immediate introduction of such a card at no charge and of an accessible and effective system to ensure wide availability of application forms and a prompt processing of applications. The Commission shares the view of the Pioneer Total Abstinence Association in its submission that the age card should be widely publicised.

The Commission further recommends that the purchase of alcohol on behalf of young people be dealt with severely.

³ The Department of Education and Science have indicated that the reason age cards currently in use are so infrequently taken up is that the servers of alcohol do not demand them with the regularity necessary. They have also pointed out that most 18 year olds are no longer in second level education.

Additional access to the off-licence trade

The provisions of the Intoxicating Liquor Act, 2000 whereby a licence could be purchased anywhere in the country for extinguishment in order to obtain a new licence had two interesting effects. First, it radically decreased the value of licences in heavily populated areas. This was because prior to the Act, a licence to be extinguished had to be in the immediate vicinity of the premises which was now required to be licensed. Since a licence from anywhere in the country could be used for this purpose an immediate fall in the value of licences in heavily populated areas followed.

A further consequence however, is that the value of country licences increased radically as they could be used for extinguishing and obtaining a licence in the more densely populated areas.

Thus the increased value of country licences itself had an anti-competitive effect in preventing traders in rural areas from entering the off-licence trade on the grounds of the cost of extinguishing such licence. Thus to purchase a licence in order to enter the off-licensed sector in rural areas became prohibitive. The Commission saw very fully these difficulties and it would be naive to say that it did not give rise to considerable disagreement within the Commission.

On the one side, there were those who contended that the quantitative restriction contained in the licensing laws, which requires that an existing licence be extinguished before a new licence can issue, served only the interests of existing licensees. It had a clearly detrimental effect on consumers, depriving them of choice, as well as preventing suitable and qualified people from entering the business. They were fully cognisant of the social problems connected with excessive drinking and did not dispute the submissions made by the Department of Health and Children. However, they contended that the quantitative restriction was not an effective, appropriate or proportionate instrument for addressing these problems (indeed, arguably, it increases control problems in some areas and maintains an artificially high number of outlets in others). The problems described by the Department of Health and Children would be dealt with far more effectively and appropriately, without adversely affecting consumers, through the application of the qualitative criteria contained in the licensing laws (which would, of course, remain), rigorous enforcement of the law and proper educational provision.

The counter-argument was that to provide in the current climate additional outlets for the sale of intoxicating liquor would maximise the under-age drinking problem with which we are now concerned. The arguments against freeing up access to the off-licensed trade also dealt with the fact that a recommendation on dormant licences would have some effect in that regard in any event by reducing the cost of such licences. The general tenor of those opposed to freeing up licences was that this was the wrong time to do so, that it would send out the wrong signals and that we should wait until both the 2000 Act has had some time to take effect and until our other recommendations including our recommendations regarding under-age drinking have been implemented.

There was considerable healthy debate among the members of the Commission and a number of submissions were received from individual members, including the Chairman. There were four particular documents reflecting the different points of view. Since the Chairman's document has now been incorporated into Section C of the Recommendations

the other three are attached at Schedule 1 and from these can be seen the tenor of the arguments which were advanced.

While at all times conscious of its terms of reference the Commission was nonetheless conscious of the serious problem of underage-drinking and binge drinking. The Commission felt that any plan that would permit new licences to come into being should be balanced in a number of ways. The applicant should be conscious of the responsibilities of selling. The applicant's premises and the site of those premises should be suitable. Access to those premises for supervisory purposes should be readily available.

Eventually the Commission agreed to make the recommendations contained in this Report. The Commission is anxious that a meaningful fee should be paid by each applicant to impress on such applicant the social responsibilities involved. The Commission considers that Planning Permission should be required to ensure that alcohol is not being served on a haphazard basis.⁴ The Commission is anxious that any premises should be capable of being easily supervised. On the other hand, the Commission is also concerned that the payment of a substantial fee could prove uneconomical to small food stores in outlying areas and the Commission trusts that its recommendations have struck the right balance in the matter.

Extraneous matters

The Commission was also concerned with a complaint from the Garda Síochána that access to licensed areas of off-licences was not always easily and readily available and the Commission has made a recommendation in respect of this. This applies principally to shopping malls and supermarkets where the licensed area does not adjoin the public road.

The Commission is very conscious of the fact that while the Responsible Server Programme i.e. a programme designed to teach persons serving in the licensed trade exists for on-licences, it has not existed heretofore for off-licences. The dangers of under-age people selling any form of alcohol to under-age people is clearly one which cannot be permitted. It is clearly desirable that all persons serving alcohol have been adequately trained and accordingly we make Recommendation 10 hereunder.

⁴ Unanimity was not reached on this as on a number of other issues referred to elsewhere in the Report. Commission member, Ms. Ailish Forde, RGDATA had reservations about the planning permission conditions which they consider might tie up applicants in planning problems for a long period. (See footnote 9 , p.14)

Recommendations

Section A – Dormant licences

1. Gardaí should object to renewal of publicans' licences where they lie dormant and are unused. As stated in this Report, a licence is, in effect, a permission from the State and should not be retained merely for speculative purposes. Co-operation between the Revenue Commissioners and the Garda authorities in this regard is very much welcomed. The current 5-year moratorium applying in relation to unrenewed licences should, except in exceptional circumstances, be withdrawn. Death of the licensee, serious illness or a major refurbishment or development plan would be reasons why some small degree of latitude might be granted.⁵

Section B – Under-age drinking

1. The Government should immediately establish a broadly based strategic task force, under the aegis of the Department of Health and Children, at least for the remaining duration of the European Alcohol Action Plan 2000 – 2005 to provide advice to Government and public bodies on best practice in alcohol harm prevention measures. This strategic task force should be set up without delay and its advice and recommendations should be immediately acted on.
2. Age card application forms should be distributed through all appropriate channels; the current processing fee of £5 should be abolished. As the age card will be the only acceptable evidence of age – not just for alcohol but for admission where appropriate to night clubs or discos or even cinemas it is essential that as many young people as possible take it up. Whatever form of advertising is necessary to bring these matters to the attention of young people should be undertaken. The age card should be tamper proof and be made as accessible and user friendly as possible.
3. The Department of Education and Science should give immediate effect to the system of working through individual schools with their parent-teacher committees for the purposes of educating such parents to their prime responsibility to looking after their children and seeking the assistance of each school to set up programmes to advise parents accordingly. Each school should in turn be required to produce a statement of its policy on under-age drinking and on educating its pupils accordingly.

There does not appear to be a formal policy in this regard and while the Commission is relieved to learn that this is being addressed, it believes that a more urgent programme than “On My Own Two Feet” should be introduced to deal specifically with the problem of under-age drinking.

4. The Department of Education and Science should give immediate effect to a system of educating young people in the country on the dangers caused by the excessive consumption of alcohol and introduce this into the curriculum for all young people.

Where teachers give up their time to be taught the skills dealing with this problem they should not have to do so in their own time and should be paid for same.

5. Where additional resources are required to supervise and implement these regulations those should be provided. Highlighted to the Commission in the submissions received was the perception that overall the implementation of underage drinking regulations was not satisfactory.

⁵ See footnote 1, p.8.

Section C – Off-Licensing recommendations

Recommendations	Reasons
<p>1. That a new Liquor Off-Licence be created to permit holders to sell for consumption off the premises either:</p> <p>(a) Wine; or (b) Wine, beer including cider, and spirits.⁶</p>	<p>1. To codify the laws. The position regarding existing licence holders should not be changed but they will have to apply for renewal to the Courts.</p>
<p>2. On applying for an off-licence it shall not be necessary for the applicant to cause an existing licence to be extinguished.⁷</p>	<p>2. To liberalise off-licence laws in accordance with our terms of reference and to provide for adequate competition particularly in areas where such competition does not exist. (N.B. The checks and balances come later in these recommendations).</p>
<p>3. Application for such licence or for renewal of existing licences shall be to the Court. On any application for a new licence the requisite notices shall be published in the press and exhibited prominently in the premises to which the application relates. This notice shall identify clearly the procedures to be followed by objectors.</p>	<p>3. So the public will be aware of what is happening and can be heard if they have any objections.</p>
<p>4. The applicant will have to comply with the usual conditions regarding suitability of premises and the other grounds for objection as contained in section 18 of the 2000 Act.⁸</p>	<p>4. General conformity with legislation and to give the public and/or the authorities proper grounds for objection.</p>
<p>5. Should a full off-licence be required as in Recommendation 1(b) then the applicant shall be obliged to obtain planning permission and shall satisfy the Court at the hearing of the application that any conditions attached to such permission have been complied with.⁹</p>	<p>5. Good planning practice and conformity with general practice to ensure that the layout of premises is suitable.</p>

⁶ Ms. Ailish Forde, RGDATA favoured the introduction of a wine and beer only licence.

⁷ Mr. Jim McCabe, National Off-Licence Association dissented from this recommendation on the grounds that the liberalisation caused by the Intoxicating Liquor Act, 2000 had not yet taken effect and that this Act coupled with the recommendations in Section A would radically reduce the cost of licences and open up the industry. If, adequate time having been given, these steps did not open up the market, then he was prepared to reconsider the matter.

Ms. Forde and Mr. McCabe both favoured the introduction of a compensation element for persons disadvantaged by any changes in relation to the purchase of licences for extinguishment.

Mr. Chris Fitzgerald, Department of Health and Children, many of whose helpful suggestions have been embraced in the main Report, indicated that this recommendation would run counter to his Department's position on the link between greater availability and evidence of greater alcohol related harm.

While accepting the need for codification of licensing provisions, Ms. Carmel Foley, Ms. Isolde Goggin, and Mr. Brian Whitney consider that the objectives of recommendations 1 and 2 might be more expeditiously achieved by a relatively simple amendment to existing legislation to exempt any application for a new off-licence from the requirement to extinguish an existing licence.

⁸ Ms. Carmel Foley, Director of Consumer Affairs, Ms. Isolde Goggin, Competition Authority and Mr. Brian Whitney, Department of Enterprise, Trade and Employment expressed reservations in relation to the criterion at section 18(1)(c)(iv) of the Intoxicating Liquor Act, 2000 as a ground for objection to a licence application and will argue this point at a later stage of the Commission's deliberations.

⁹ The members of the Commission considered that the acquisition of a full off-licence for any premises involved a change of use of which the public should be made aware and entitled to object to at the planning stage. This recommendation was not acceptable to Ms. Carmel Foley, Ms. Isolde Goggin and Mr. Brian Whitney on the grounds that any genuine planning issues are already covered by existing planning and licensing laws and this provision presents an unnecessary and unwarranted barrier to entry to the business. Ms. Ailish Forde, RGDATA considered the scrutiny of the Courts to be sufficient and the involvement of planning authorities inappropriate. Indeed, on the other hand, some of the members were of the view that a planning permission requirement should also apply to new wine-only licences.

Section C – Off-Licensing recommendations—*continued*

Recommendations	Reasons
<p>6. The usual other proofs such as tax clearance certificates to be produced prior to the issue of any licence.</p>	<p>6. Public policy.</p>
<p>7. That clear physical access to the premises be available to both the Garda Síochána authorities and to the officers of the Customs & Excise. Failure to provide clear evidence of the availability of such access to be a reason for not issuing a licence.</p>	<p>7. For supervision purposes access by both Gardaí and Customs & Excise is absolutely necessary.</p>
<p>8. On renewal if there is an objection each applicant to satisfy the Court that they continue to comply with planning permissions and that there are not public order offences committed with which the sale of liquor from their premises has been involved.</p>	<p>8. Common good.</p>
<p>9. (a) Where an applicant is granted a licence under paragraph 1(b) of these Recommendations then in order to reflect the social responsibility involved in selling alcohol he or she shall be required to pay such meaningful fee as the Minister may from time to time by regulation determine.¹⁰</p> <p>(b) The Minister shall determine upon a lesser fee where any of the following conditions apply:</p> <ul style="list-style-type: none"> (i) The applicant's premises is not in an urban area nor in a highly populated area. (ii) The applicant's premises is in a holiday resort area; or (iii) Only a strictly limited amount of floor space is being made available for the display of alcohol. <p>(c) An annual renewal charge to be determined by the Minister in accordance with turnover of alcohol.</p>	<p>9. (a) To reflect the social responsibility involved in selling alcohol and the Commission would recommend that the fee should be sufficient to emphasise to the public the importance of this.</p> <p>(b) The Commission is conscious that in some rural areas there is quite inadequate competition and this recommendation is intended to cope with such a situation but they wish to emphasise again the importance of the social responsibilities involved in selling alcohol in any form.</p>
<p>10. Where a full off-licence is applied for the Court to be satisfied as to the experience and training of those who will serve alcohol.¹¹</p>	<p>10. Public good.</p>

¹⁰ Members Ms. Carmel Foley, Ms. Isolde Goggin and Mr. Brian Whitney dissented vigorously from this recommendation on the grounds that it is anti-competitive and contrary to the Commission's terms of reference. (They considered that the proposed measure seems highly unlikely to serve any public purpose.) They submitted that in the event of the recommendation being adopted the level of charge determined by the Minister be such that it will minimise the barrier to entry to the business. On the other hand, Messrs. Frank Fell, Licensed Vintners' Association, Michael Murphy, IBEC, Tadg O'Sullivan, Vintners' Federation of Ireland and John Power, Irish Hotels Federation felt very strongly that the fee should be substantial so as to reflect the social responsibility involved.

¹¹ It would be the Commission's intention to recommend ultimately that all persons involved in the sale of alcohol should be adequately trained. This recommendation is considered by a number of members to be discriminatory against new licensees.

Because of time constraints the Commission could not consider the sensitive area of petrol station forecourts. This it will address immediately, inviting submissions from the relevant parties and, if necessary, issue a separate recommendation to the Minister.

Section D – Extraneous matters

1. Where a proposed licensed premises does not abut the public roadway the grant of a licence certificate should contain a condition requiring unobstructed entry for the Garda Síochána and Customs and Excise in connection with enforcement of the licensing laws; any impeded entry should constitute grounds for immediately seeking a court order for closure of the premises. This is in accordance with Recommendation Section C 7.
2. An appropriate framework should be put in place without delay through agreement between the Department of Health and Children and the licensee trade associations, both on and off, to permit the national operation of responsible server programmes for all liquor sales staff. This is to enable Recommendation Section C 10 to be fully implemented and to ensure that those serving alcohol are properly trained.

Acknowledgements

The Commission has been extremely fortunate that it has had as its Secretary Ms. Catherine Sheridan from the Department of Justice, Equality and Law Reform without whose cheerful and good-humoured dedication to her duties – even in difficult circumstances – the Commission’s task would have been rendered all the more difficult. The Commission’s warm thanks and sincere congratulations go to her for her work on its behalf.

The Commission had available to it the benefits of the great knowledge of the licensing laws which Marc McDonald, rapporteur and consultant to the Commission enjoys. That knowledge was always available to the Commission and in all his work for the Commission Marc McDonald proved himself most dedicated. The Commission is happy to acknowledge his efforts and to express to him its thanks.

The Commission is grateful to all those who made Submissions or presentations but it would be wrong not to mention the great help given to the Commission by the eminent auctioneers Messrs. Morrisseys. Their Mr. Bill Morrissey gave up his own time to be of assistance to the Commission and for this the Commission is also grateful.

The Chairman is particularly grateful to the many members of the teaching profession with whom he had discussions and who gave of their time and advice freely and unstintingly.

Appendix 1

Members of the Commission on Liquor Licensing

Mr. Gordon Holmes, Chairman

Mr. Michael Ahern, Solicitor, Iveragh Rd., Killorglin, Co. Kerry

Mr. Seamus Carroll, Principal Officer, Department of Justice, Equality and Law Reform

Mr. Phonsey Croke, Principal Officer, Office of the Revenue Commissioners and Department of Finance

Mr. John Douglas, MANDATE and member of ICTU Executive Council

Mr. Paddy Early, Independent Supermarkets Association (resigned March, 2001)

Mr. Frank Fell, Chief Executive, Licensed Vintners' Association

Mr. Chris Fitzgerald, Principal Officer, Department of Health and Children and the Department of Education and Science (Mr. Aidan O'Connor who was replaced by Mr. Christopher McCamley, Assistant Principal, February 2001)

Ms. Carmel Foley, Director of Consumer Affairs

Ms. Ailish Forde, Director General, RGDATA (appointed March, 2001)

Ms. Isolde Goggin, Competition Authority

Superintendent John Kelly, Garda Headquarters

Mr. Jim Mc Cabe, National Spokesperson & Executive Member, NOffLA

Mr. Michael Murphy, Irish Business and Employers Confederation (IBEC)

Mr. Henry O'Neill, Chief Executive, Restaurants Association of Ireland

Mr. Tadg O'Sullivan, Chief Executive, Vintners' Federation of Ireland

Mr. John Power, Chief Executive, Irish Hotels Federation

Mr. Patrick Prendergast, Irish Nightclub Industry Association

Mr. Eddie Sharkey, Registrar, Bord Fáilte

Mr. Eamonn Waters, National Youth Council of Ireland (resigned February 2001)

Mr. Brian Whitney, Assistant Secretary, Department of Enterprise, Trade and Employment

Ms. Catherine Sheridan, Assistant Principal, Department of Justice, Equality and Law Reform, Secretary

Personnel

Ms. Geraldine Desmond, Clerical Officer

Ms. Sinéad Donohoe, Clerical Officer

Rapporteur/Consultant

Mr. Marc McDonald

Appendix 2

Terms of Reference

The terms of reference are as follows:

(1) To review the Liquor Licensing system in the light of all relevant factors, including systems for the licensing of alcohol in other countries, and to make recommendations for a Liquor Licensing system geared to meeting the needs of consumers, in a competitive market environment, while taking due account of the social, health and economic interests of a modern society.

(2) In particular:

to review the scope for a system of additional licences;

to examine demand in areas that are under-licensed, new areas of increasing population, and tourist areas;

to examine other aspects of the licensing system, such as licences for theatres and places of public entertainment, the licensing of residential accommodation which does not come under the definition of an hotel, interpretative centres and other places where the sale of alcohol is ancillary to the main business carried out.

(3) To examine the nature of the off-licence and particularly the method of access to the off-licensed trade in the interests of promoting better competition.

(4) To enquire into other aspects of the Licensing Code, as may be appropriate.

(5) To make recommendations for any necessary legislative changes to give effect to the recommendations put forward.

(6) To submit a report within three months of the first meeting on paragraph 3 of its terms of reference and a Final Report within two years of the first meeting on all other matters.

Appendix 3

Submissions regarding off-licences

Mr. Alan E. Algeo, Ellengrove Limited, T/A Al Vinos, Athlone, Co. Westmeath.

ASTI, ASTI House, Winetavern St., Dublin 8.

Mr. John Browne, T.D.

Mr. Richard Burke, Hollywood, Co. Wicklow.

Carlow Brewing Company, 'The Goods Store', Station Rd., Carlow.

The Consumers' Association of Ireland Ltd., 45 Upr Mount St., Dublin 2.

Mr. Michael Creed, T.D.

Mr. E. Creggy, Kingslake Inns Off-Licence, Inchicore, Dublin 8.

Mr. Martin Cronin, Cronin's Off-Licence, Cork.

Mr. Tomás M. Cunningham, Cunningham's Supermarket, Mountbellew, Co. Galway.

Mr. Martin Currid, Arual Ltd., T/A Currids Bar and Off-Licence, Sligo.

Mr. Paul M. L. Deveney, Deveneys Off-Licence, Sandyford, Dublin 16.

Mr. Seán Doyle, U.C., M.C.C., Enniscorthy, Co. Wexford.

Mr. Basil Duffy, Duffy Group Limited, Tallaght, Dublin 24.

Mr. J. Egan, Egan's Off-Licence, Drogheda.

Mr. Sean Fleming, T.D.

Mr. Christopher Goode, Harold's Cross, Dublin 6W.

Ms. Mary Harkin, Brockagh, Cloghan P.O., Co. Donegal.

Department of Education and Science.

Department of Health and Children.

Mr. Tony Higgins & Mr. Donal Lydon, The Bunch of Grapes Off-Licence & Wine Shop, Donabate, Co. Dublin.

The Independent Liquor Licensing Reform Group.

Irish Spirits Association, Confederation House, Lr. Baggot St., Dublin 2.

Mr. Michael Kitt, T.D.

Lawlor's Grocery and Off-Licence, Bagenalstown, Co. Carlow.

Licensed Vintners' Association.

Mr. John Maher, Waterford.

Mr. Patrick Mc Gowan, M.C.C., Mayfield, Killygordon, Co. Donegal.

M.C.R. Management Committee, M.C.R. Community Centre, Mail Coach Rd., Sligo.

Mr. Ronan Morris, Alloro Ltd., The Wine Bottle Off-Licence, Dunshaughlin, Co. Meath.

National Off-Licence Association.

Ms. Doireann Ní Dhuigneán, Maynooth, Co. Kildare.

Mr. Brendan O'Brien, O'Brien's Wine Off-Licence, Stillorgan Industrial Park, Co. Dublin.

Minister of State, Ned O'Keeffe, T.D.

Mr. Tim O'Leary, Listowel, Co. Kerry.

Mr. Ralph Parkes, Grand Cru Wines Ltd. Limerick.

Pioneer Total Abstinence Association, 27 Upper Sherrard St., Dublin 1.

Ms. Pat Reid, Reid's Off-Licence, Enniscorthy, Co. Wexford.

RGDATA, Rock House, Main St., Blackrock, Co. Dublin.

Mr. Frank Searson, Blackrock, Co. Dublin.

Mr. Fergus Slyne, Sommar Ltd., Carrigaline Service Station, Carrigaline, Co. Cork.

Stratford College Parents' Association, Stratford College, Zion Rd., Dublin 6.

Teachers' Union of Ireland, Orwell Road, Rathgar, Dublin 6.

Mr. Anthony P. Vesey, The Corner Shop, Kilconny, Belturbet, Co. Cavan.

Ms. Mary & Mr. Peter Ward, Country Choice Delicatessen & Coffee-bar, Nenagh, Co. Tipperary.

Mr. Tony Wickham, Wickham Bros., Enniscorthy, Co. Wexford.

Vintners' Federation of Ireland.

Appendix 4

Oral presentations

Independent Liquor Licensing Reform Group

Mr. J. J. Bunyan, Co-ordinator

Mr. Jerry Purcell, Member of Steering Committee

Mr. Jim McCarthy, Member of Steering Committee

Consumers' Association of Ireland

Mr. Michael Kilcoyne, Chairperson

Ms. Dorothy Gallagher, Vice-Chairperson

National Off-Licence Association

Ms. Evelyn Jones

Mr. Martin Moran

Mr. Frank Gleeson

RGDATA

Ms. Ailish Forde, Director General

Mr. Garrett Fennell, Consultant

ISA (Irish Spirits Association)

Ms. Kathryn Raleigh, Director General

Mr. Jim Killeen, Chairman

National Parents Council – Primary

Ms. Fionnuala Kilfeather, Chief Executive

National Parents Council – Post-Primary

Ms. Marie Danaswamy, President

Appendix 5

Off-licensing Subcommittee

Mr. Gordon Holmes (Chairman)

Mr. Paddy Early, Independent Supermarkets' Association

Mr. Frank Fell, LVA

Ms. Carmel Foley, Director of Consumer Affairs

Mr. Jim Mc Cabe, NOffLA

Mr. Brian Whitney, Department of Enterprise, Trade and Employment

Superintendent John Kelly, Garda HQ

Mr. Phonsey Croke, Revenue Commissioners

} Advisers

Youth Age Card Subcommittee

Mr. Gordon Holmes (Chairman)

Mr. Tadg O'Sullivan, Vintners' Federation of Ireland

Mr. Eamonn Waters, National Youth Council of Ireland

Mr. Chris Fitzgerald, Dept. of Health and Children

Supt. John Kelly, Garda HQ

Appendix 6

The Nature of the Off-Licence and the Method of Access to the Off-Licence Trade

Prepared by James V. Woods, BL.

I – NATURE OF THE OFF-LICENCE

Definition of Licence

A licence is, in law, an authority or permission to do something which would otherwise be unlawful or illegal. A licence granted in pursuance of the Licensing Acts, 1833 to 2000, is a personal authority to the person named therein to sell intoxicating liquors in accordance with the terms of the licence in particular premises.

“There is no constitutional right to a liquor licence or a renewal thereof. There are only such rights as are given by statute subject to the limitations and conditions prescribed by statute” (*per Finlay CJ in the State (Pheasantry Ltd) v Donnelly (1982) I.L.R.M. 512 at p. 516*).

The ordinary on-licence (publican’s licence, licence for hotel) authorises the licence holder to sell the full range of intoxicating liquors (spirits, beer, cider, wine and sweets) by retail for consumption either on or off the premises. A retailer’s off-licence authorises the sale by retail of the liquor to which the licence extends for consumption off the premises only. While there are certain exceptions in the case of on-licences (e.g., passenger vessels, aircraft, railway restaurant cars), off-licences may only be granted in respect of “a house”. Consequently, sales from a vehicle or a marquee tent are not permissible under the authority of an off-licence.

Sale by Retail

The First Schedule to the Finance (1909-10) Act, 1910, provides that sale by retail means :

“sale at any one time to one person of liquor in the following quantities, namely–

- (a) in the case of spirits, wine or sweets, in any quantity not exceeding two gallons or not exceeding one dozen reputed quart bottles; and
- (b) in the case of beer or cider, in any quantity not exceeding four and a half gallons or not exceeding two dozen reputed quart bottles;

but not in any larger quantities.”

Sales in any larger quantities would constitute wholesale dealing for which an appropriate wholesale dealer’s licence must be taken out (i.e., a Spirit Dealer’s Licence, a Beer Dealer’s Licence, a Wine Dealer’s Licence or a Sweets Dealer’s Licence).

A “reputed pint” is nowhere defined in any Act. It was a measure used by excise officers. In practice it is accepted as the twelfth part of a gallon, whilst an imperial pint is an eighth part of a gallon.

Converting these quantities to the metric system in compliance with the European Communities (Units of Measurement) Regulations, 1992 (SI 255/92) –

2 doz. “reputed quarts” = 18.192 litres

1 gallon = 4.546 litres

2 gallons = 9.092 litres

4 $\frac{1}{2}$ gallons = 20.457 litres

Accordingly, slightly over 9 litres is the maximum quantity of spirits, wine or sweets, or a combination of these liquors which can be sold by retail to any one person at any one time. In the case of beer or cider or a combination of these liquors, the maximum retail quantity is slightly less than 20 $\frac{1}{2}$ litres.

Classes of Off-Licences

The expression “off-licence” means a licence (whether granted on production or without production of a court certificate) for the sale of intoxicating liquor for consumption off the premises (*s.1, Intoxicating Liquor Act, 1927, as amended by s. 3, Intox. Liq. Act, 1943*).

The First Schedule to the Finance (1909-10) Act, 1910, provides for 5 classes of retailers’ off-licences –

- 1. Spirits Retailer’s Off-licence** (also known as a Spirit Grocer’s Licence), which authorises the sale by retail of spirits only (but not in open vessels). 484 such licences were issued by the Revenue Commissioners in 1998. This class of licence is generally, but not always, held in conjunction with a Beer Retailer’s Off-Licence and/or a Wine Retailer’s Off-Licence.
- 2. Beer Retailer’s Off-licence**, which authorises the sale by retail of cider as well as beer. This licence is generally, but not always, held in conjunction with a Spirits Retailer’s Off-Licence and/or a Wine Retailer’s Off-licence. 589 such licences were issued by the Revenue Commissioners in 1998.
- 3. Wine Retailer’s Off-licence**, which authorises the retail sale of sweets (i.e. made wine, mead and metheglin) as well as foreign wine, but not in open vessels nor in any quantity less than 1 reputed pint bottle (0.479 litres). In 1998 the Revenue Commissioners issued 571 such licences.
- 4. Sweets Retailer’s Off-Licence**, which authorises the retail sale of made wine, mead and metheglin for consumption off the premises. The number of such licences issued in recent years is quite insignificant – 1996 (9), 1997 (11) and 1998 (6).
- 5. Cider Retailer’s Off-Licence**, which authorises the retail sale of cider and perry for consumption off the premises. Here again the number of licences issued is quite small – 1996 (16), 1997 (20) and 1998 (16).

On-Licences authorise Off-Sales

A retailer’s on-licence authorises sale by retail of the liquor to which the licence extends for consumption on or off the premises. It is not unusual for the holders of such licences to conduct a mainly or, in some cases, an exclusively off-licence trade. In the *Application of Power Supermarkets Ltd. (1988) IR 206*, Walsh J, delivering the judgment of the Supreme Court noted that (at p. 208) –

“(t)he eight objectors, although they are the owners of full on-licences, which means that they can sell for consumption on the premises or for consumption off the premises, appear to devote their business exclusively, or almost exclusively, to the conduct of off-licence business. None of the eight objectors appears ever to have sought to have his licence reduced from an on-licence to an off-licence and therefore may be assumed to have come to the conclusion that it is to their economic advantage to conduct only an off-licence business while still apparently being successful in having their on-licence renewed at every annual licensing session.”

Similarly, most premises currently licensed for the sale of wine only (e.g., convenience stores, mini-markets, etc.) conduct the sale of wine for consumption off the premises under the authority of a Wine Retailer’s On-Licence granted pursuant to the provisions of the Refreshment Houses (Ir.) Act, 1860.

II – METHOD OF ACCESS TO OFF-LICENSED TRADE

Grant of Full Off-Licence

Full off-licence

Neither the Licensing Acts nor the Excise Acts describe any off-licence or combination of off-licences as a “full off-licence” but it is the description usually given to the combination of licences which entitle the holder to sell the full range of alcoholic drinks, namely–

- a spirit retailer’s off-licence,
- a beer retailer’s off-licence, and
- a wine retailer’s off-licence.

Court certificate required

In order to obtain a spirit and/or beer retailer’s off-licence a Court Certificate must be obtained under a provision of the Licensing Acts which will entitle the holder to obtain, and the appropriate officer of the Revenue Commissioners, to issue the licence described therein. The District Court for the court area in which the proposed premises are situate has exclusive jurisdiction in the grant of such Certificates and the matter will only come for consideration by the Circuit Court where an appeal is taken from the decision of the Judge of the District Court (*Courts of Justice Act, 1924, section 77C and section 87*).

General prerequisites to grant of court certificate

In all cases where the Court grants a Certificate entitling the holder to obtain an off-licence another licence or licences will be, or will be deemed to be, extinguished. If the application is taken under certain Licensing Acts (e.g., the Intoxicating Liquor Act, 2000, section 18) the original or existing licence which will fall to be extinguished may be a publican’s licence whereas if the application is taken under other Licensing Acts (e.g., the Intoxicating Liquor Act, 1960, section 14) the Certificate granted will entitle the holder to a licence of the same character only as that surrendered (i.e., in order to obtain a full off-licence both a spirit retailer’s off-licence and a beer retailer’s off-licence must be extinguished).

There is a further requirement in the case of every application to the Court for a Certificate for a full off-licence – in order to obtain a beer retailer’s off-licence the proposed premises must be rated under the Valuation Acts at £15 or upwards if situate in a city or town of a population exceeding 10,000 inhabitants according to the last census, or at £8 or upwards if situate elsewhere (*section 3, Beerhouses (Ir.) Act, 1864; section 2, Beer Licences Regulation*

(Ir.) Act, 1877, as amended by s. 37, Intox. Liq. Act, 2000). This requirement will arise in an application for an on-licence only where a “hotel licence” is being applied for.

Who is entitled to object?

Competent objectors who may appear in Court and oppose the grant of a Certificate entitling the holder to the grant of a spirit and/or beer retailer’s off-licence are –

- (i) Any resident or owner of property in the parish (*Beer Retailers’ and Spirit Grocers’ Retail Licences (Ir.) Act, 1900, section 1*), as well as the Garda Superintendent for the licensing area in which the proposed premises are situate (*Beerhouses (Ir.) Act, 1864, section 5*), may object to the grant of the certificate on any of the statutory grounds of objection provided for in the section relied upon for the grant of the Certificate.
- (ii) Any person who would be affected by the decision to grant the licence may oppose the application on the basis that any of the criteria specified in the provision of the Licensing Act relied upon for the grant of the certificate have not been complied with (*Jaggers Restaurant Ltd. v Ahearne (1988) IR 308; (1988) ILRM 553*).

Circumstances in which jurisdiction to grant a Certificate may be exercised

The Licensing Acts provide that the District Court may grant a Certificate for a new full off-licence in certain circumstances. While it is anticipated that most applications will be made pursuant to section 18 of the Intoxicating Liquor Act, 2000, other statutory provisions for the grant of court certificates entitling the holder to the grant of a new licence were retained and are relevant and suitable methods of acquiring a court certificate in certain circumstances.

(1) Intoxicating Liquor Act, 2000. A Certificate for a new off-licence may be granted for premises pursuant to section 18 of this Act.

- (a) The proposed premises may be either in an urban or a rural area.
- (b) An existing licence from anywhere within the State must be offered for extinguishment if the application is granted.
- (c) The existing licence may either be a full licence (i.e., a publican’s licence which is neither a six-day nor an early-closing licence) or a licence or licences of the same character as the licence sought. Accordingly, an intending applicant for a full off-licence has the option of offering for extinguishment either (a) an Ordinary Publican’s Licence or (b) both a Spirit Retailer’s Off-Licence and a Beer Retailer’s Off-Licence.
- (d) If the applicant is not the holder of the licence or licences to be surrendered he must obtain the consent of the actual holder to such extinguishment if the application is granted.

The Court may prohibit the issuing of the licence (i.e., refuse the Certificate) on the ground of –

- (i) the character, misconduct or unfitness of the applicant,
- (ii) the unfitness or inconvenience of the new premises,
- (iii) their unsuitability for the needs of persons residing in the neighbourhood, or

- (iv) the adequacy of the existing number of licensed premises of the same character in the neighbourhood.

The ground of objection at (iii) is new to the licensing code while the ground of objection at (iv) differs from the third ground set out in the Licensing (Ir.) Act, 1833 (“the number of previously licensed houses in the neighbourhood”), and which applies in relation to applications under other provisions of the Licensing Acts.

- (2) Licensing (Ir.) Act, 1902.** Section 2(1) as amended by section 23 of the Intoxicating Liquor Act, 1960, provides for the grant of a new licence in respect of premises which have been licensed at any time during the period of five years before the day on which notice of application for the grant of a certificate entitling the holder to receive a licence in respect of the premises is lodged with the appropriate Court.

The section was originally intended to “revive” licences which had been allowed to lapse. Its relevance in the context of this Paper is that it provides a mechanism whereby the holder of an on-licence (i.e., a publican’s licence) can reduce the licence to a full off-licence. There were and are certain advantages attached to such a reduction.

- (a) Prior to the enactment of the Intoxicating Liquor Act, 2000, an applicant for a full off-licence for premises outside of a city or town was obliged to surrender licences of the same character as the licence sought. Hence it was necessary to “reduce” the licence or licences offered for extinguishment.
- (b) The holder of a Six-Day or Early-Closing Publican’s Licence can obtain a “full off-licence” by reducing his licence to a full off-licence as six-day and early-closing conditions apply only to “on-licences”.
- (c) The maximum excise duty payable on a full off-licence is £600 (£200 each in respect of the spirit retailer’s off-licence, the beer retailer’s off-licence and the wine retailer’s off-licence), while excise duty on a sliding scale applies to on-licences with an annual turnover in excess of £150,000.

An application under this provision may be opposed on the grounds of –

- (i) the character, misconduct or unfitness of the applicant,
- (ii) the unfitness or inconvenience of the premises, or
- (iii) the number of previously licensed houses in the neighbourhood.
(Section 3, Licensing (Ir.) Act, 1833).

- (3) Licensing (Ir.) Act, 1902.** Section 6 as amended by section 24 of the Intoxicating Liquor Act, 1960, provides for the expansion of existing licensed premises by incorporating attached or adjoining premises. The original licensed premises or a substantial part of it must continue to form part of the extended premises. Accordingly, the provision cannot be availed of to “leapfrog” from one premises to another.

Where the original licensed premises were premises to which a publican’s licence was attached the new licence for the extended premises can be, at the request of the applicant, a full off-licence in which case the application is brought to the District Court rather than the Circuit Court (*Application of Power Supermarkets Ltd. (1988) IR 206*).

The Certificate for the new licence will only be granted if the Court is satisfied that it is sought –

“in order to render the said licensed premises more suitable for the business carried on therein.”

An application under this provision may be opposed on the grounds of –

- (i) the character, misconduct or unfitness of the applicant,
- (ii) the unfitness or inconvenience of the premises, or
- (iii) the number of previously licensed houses in the neighbourhood.
(*Section 3, Licensing (Ir.) Act, 1833*).

- (4) Intoxicating Liquor Act, 1927.** Section 62 as amended by section 18 of the Intoxicating Liquor Act, 1943, and by section 9 of the Courts (No.2) Act, 1986, provides that the holder of an on-licence in respect of premises situate in a county borough may apply at any annual licensing District Court that in lieu of the renewal of the on-licence there be granted to him in respect of the said premises a certificate for a new spirit retailer’s off-licence or a certificate for a new beer retailer’s off-licence or certificates for both such licences. The Court must be satisfied that the sale of intoxicating liquor for consumption on the premises is not the principal business carried on in the premises to which the on-licence is attached.

The process cannot be reversed and once “reduced” no new “on-licence” may thereafter be granted in respect of those premises while such off-licences are attached thereto. As pointed out the provision may be availed of only in the county boroughs of Dublin, Cork, Limerick, Waterford and Galway.

- (5) Intoxicating Liquor Act, 1943.** Section 21, as amended by section 33 of the Intoxicating Liquor Act, 1960, may be availed of for the grant of a new full off-licence for more convenient premises not situate in a county or other borough, an urban district or a town, in substitution for an existing full off-licence from within the same district court area.

The provision is now of very limited use –

- (i) a spirit retailer’s off-licence and a beer retailer’s off-licence from within the same district court area must be surrendered,
- (ii) the rateable valuation of the new premises must not be less than that of the proposed premises,
- (iii) the Court can refuse the certificate “on the ground that the existence of a licence in respect of the new premises would be unreasonably detrimental to the business then carried on in some licensed premises in the neighbourhood of the new premise”.

- (6) Destroyed or Demolished premises.** The licensing code provides for the grant of new licences on the original site or in the immediate vicinity of proposed premises in substitution for licences which were attached to premises which have been

- (i) destroyed or become uninhabitable (*section 22, Intoxicating Liquor Act, 1943*),
- (ii) demolished by order of a local authority (*sections 6 – 9, Intoxicating Liquor Act, 1953*), or

(iii) demolished premises (*section 14, Intoxicating Liquor Act, 1960*).

The new licence will be of the same character as the licence attached to the destroyed or demolished premises. Hence the provisions will be relevant in the context of this paper only where the original licence was an off-licence.

Issue of licences by Revenue Commissioners

The appropriate officer of the Revenue Commissioners will issue a Spirit Retailer's Off-Licence and a Beer Retailer's Off-Licence on production of the District Court Certificate, provided a tax clearance certificate has issued in relation to those licences, and on payment of the appropriate excise duty, presently fixed at £200 in respect of each such licence. A Wine Retailer's Off-Licence will issue on payment of an additional £200 excise duty.

Grant of Wine Retailer's Off-Licence

Under section 3 of the Refreshment Houses (Ir.) Act, 1860 (repealed by s.96 of the Finance (1909-10) Act, 1910), any shopkeeper or wine dealer was entitled to take out this licence. Between 1910 and 1927 there were no restrictions on the grant of this licence to any householder. From 1927 onwards the Revenue Commissioners were restricted from granting, transferring or renewing any wine retailer's off-licence except to a person who was carrying on the business of chemist and druggist, pharmaceutical chemist, or registered druggist, or a person who was for the time being the holder of a spirit retailer's off-licence or a beer retailer's off-licence then in force, and then only in respect of the premises where a business of the aforementioned kind was being carried on or in respect of which a spirit retailer's off-licence or a beer retailer's off-licence was in force (*section 61, Intoxicating Liquor Act, 1927; section 28(1), Intoxicating Liquor Act, 1962*).

Section 36 of the Intoxicating Liquor Act, 2000, repealed section 61 of the 1927 Act and section 28(1) of the 1962 Act and, consequently, any occupier of premises may now apply to the Revenue Commissioners for the grant of such a licence and the Commissioners are obliged to issue same on payment of the appropriate excise duty (currently fixed at £200 per annum).

There is no mechanism whereby objection can be made to the grant of this licence. Similarly, there is no provision in the Acts for transferring the licence from one person to another on the death of the licence-holder or on the assignment of his interest in the licensed premises. In such cases the new occupier applies afresh to the Revenue Commissioners for a licence. There is as yet no requirement to produce a tax clearance certificate for the grant of this licence but this situation will undoubtedly be addressed in the forthcoming Finance Bill. The requirement to produce a tax clearance certificate does arise on renewal of the licence (*section 4 of the Courts (No.2) Act, 1986, as amended by section 28, Intoxicating Liquor Act, 2000*).

A person holding the off-licence to be taken out by a retailer of wine may not sell wine in open vessels or in any quantity less than 1 reputed pint bottle (*First Schedule, Finance (1909-10) Act, 1910*). The metric equivalent of 1 reputed pint is 0.379 litres.

In 1998 the Revenue Commissioners issued 571 wine retailer's off-licences (compared with 2,938 wine retailer's on-licences). However, an increase in the number of such licences can be anticipated as convenience stores and mini-markets switch from operating under a wine retailer's on-licence to this more appropriate licence.

Sweets Retailer's Off-Licence

This licence may be granted and renewed by the Revenue Commissioners without the production of a Court Certificate or of a tax clearance certificate.

While such a licence may be forfeited for convictions for recordable offences under the Intoxicating Liquor Acts or for drugs-related offences under the Licensing (Combating Drug Abuse) Act, 1997, there is no statutory provision for objecting to either the grant or renewal of the licence.

Cider Retailer's Off-Licence

This licence is an additional licence which the Revenue Commissioners will issue, without the production of a Court Certificate, to the holder of a spirit retailer's off-licence or the holder of a wholesale dealer's licence for the sale of spirits, beer or wine (*section 28(2), Intoxicating Liquor Act, 1962*), and on payment of the appropriate excise duty, currently fixed at £2000 p.a..

Production of a separate tax clearance certificate in respect of a cider retailer's off-licence is not required.

As wholesale dealers' licences for the sale of spirits or wine can be obtained from the Revenue Commissioners without the production of a court certificate, cider retailers' licences are, consequently, freely available, a fact not generally known or appreciated.

III – SIMILARITIES, DISTINCTIONS AND ANOMALIES BETWEEN ON- AND OFF-LICENCES

Hours of Trading

The vast majority of persons licensed to sell intoxicating liquor by retail, whether for consumption on or off the premises or off the premises only and whether licensed to sell the full range of intoxicating liquors or not, are governed by the provisions contained in section 2 of the Intoxicating Liquor Act, 1927, as amended by section 3 of the Intoxicating Liquor Act, 2000, which provides for prohibited hours generally.

“Drinking-up time” and the additional periods during which hotels and restaurants may serve liquor with a meal obviously do not apply in the case of off-licences.

Prior to the enactment of the Intoxicating Liquor Act, 2000, premises to which an on-licence was attached could open for the transaction of non-licensed business from 7 a.m. onwards until the commencement of normal opening hours at 10.30 a.m. on weekdays while an off-licensed premises could open only from 9 a.m. onwards. This distinction which had existed between on-licensed premises and off-licensed premises in the conduct of non-licensed business was removed in the Intoxicating Liquor Act, 2000, and all licensed premises may now open for the conduct of non-licensed business at any time. In addition the holder of either an on-licence or an off-licence may now sell intoxicating liquor for consumption off the premises only between 7.30 a.m. and the normal opening time of 10.30 a.m. on weekdays and on a Sunday which falls on 23rd or 24th December in any year.

(Section 3, Intoxicating Liquor Act, 1927, as amended, by s.8, Intox. Liq. Act, 1960, by s.3, Intox. Liq. Act, 1962, by s.3, Intox. Liq. Act, 1995, and by s.4, Intox. Liq. Act, 2000).

Excise Duty

In the case of on-licences excise duty is calculated according to turnover and ranges from £200 p.a. where the annual turnover does not exceed £150,000 up to £3,000 where turnover is £1,000,000 or more.

In the case of off-licences a flat rate of £200 is chargeable on each class of off-licence taken up.

(Sections 154 & 155, Finance Act, 1992, as amended.)

Endorsement and Forfeiture of Licences

There is no real distinction in the application of the provisions relating to endorsement and forfeiture as between on-licences and off-licences other than will arise from the nature of the licences. For example, allowing the consumption of liquor on premises licensed only for sale off the premises will result, on a second conviction, to forfeiture of the licence (*section 13, Intoxicating Liquor (General) Act, 1924*).

Sale by Retail

The arcane provisions contained in the First Schedule to the Finance (1909-10) Act, 1910, with their references to “reputed” measures and the prohibition on the holder of a wine retailer’s off-licence from selling wine in any quantity less than “one reputed pint bottle” require to be updated.

Rateable Valuation Requirement

The rateable valuation requirement of £15 or £8, depending on the location of the premises, applicable only in the case of a beer retailer’s off-licence is another anomaly which has no place in the licensing code.

Multiplicity of Classes of Off-Licences

In the case of on-licences the different classes of licences reflect the nature of the core business being conducted (e.g., special restaurant licence for restaurants, theatre licence for a theatre, etc.). The same rationale cannot be applied in the case of off-licences.

Licensing Acts/Intoxicating Liquor Acts/ Excise Provisions

There is a nexus between the Licensing Acts and excise provisions contained in Finance Acts which cannot be ignored in any review of the Licensing Code.

In the *Application of Oshawa Limited (1992) 2 IR 425*, the Supreme Court pointed out that where a court certificate is required for the grant of a licence the “licensing authority” is not confined to one forum. It is the function of the Court to receive evidence and grant the certificate, the function of the County Registrar or District Court Clerk to issue the certificate and the function of the Customs and Excise department of the Revenue Commissioners to issue the actual licence.

Schedule 1

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Comment on the need to regulate the number of alcohol outlets

Among the arguments sometimes put forward for deregulation are that:

- (1) superpubs will otherwise replace traditional pubs,
- (2) standards will not fall, as predicted by those in favour of maintaining quantitative restrictions, and
- (3) underage drinking can be better combated by measures other than restricting the number of outlets. These arguments are addressed below.

(1) Superpubs

At a 1999 Conference on Liquor Licensing, Mr. Bill Prasifka, then a member of the Competition Authority, outlined the Authority's view that the emergence of superpubs was a direct result of the licensing regime (that existed prior to the Intoxicating Liquor Act, 2000) – and that Ireland was in danger of losing the small local pub. The same week in January 1999, Ms Isolde Goggin of the Competition Authority reiterated this view on an RTÉ television programme (Léargas). According to the Authority's thinking, licences are prohibitively expensive to open only small pubs: therefore, superpubs are the preferred alternative for industry participants.

The preceding arguments are flawed – superpubs are present in many other countries, even where deregulated licensing regimes exist. Although the simplicity of suggesting that 'if the number of outlets is restricted, then the outlets just get bigger' is appealing, it is not the case in the real world. Why would this not be the case in the real world?

First, it should be pointed out that since the Authority first espoused this view, the Intoxicating Liquor Act, 2000 has removed limitations on the number of licences in large urban areas (where superpubs predominantly exist): therefore, more pubs *can* enter the market in these areas. Second, the Intoxicating Liquor Act, 2000 has also had the effect of reducing the value, or cost, of a licence to enter the same market.

In order for the Authority's logic to be correct – that small neighbourhood pubs are in danger of being replaced by superpubs – the following conditions must hold simultaneously – (1) a large (possibly infinite) unsatisfied demand for alcohol must exist, and (2) the cost of a licence must be of such magnitude (and such a proportion of the overall costs of running a pub) that in order to be viable every new pub *must* be a superpub. Neither of the conditions are satisfied. Given that the urban market is now open to new entrants and that there is only a finite number of people in a particular catchment population, there is obviously a limit on the demand for each pub's product. Furthermore, given today's property prices and related high operational costs, the value of a licence, regardless of pub size, is only a small part of overall costs of establishing and operating a pub. It is possibly more of a risk to open a larger sized outlet compared to a smaller, dedicated premises.

Aside from these irregularities, it is indeed ironic for the Competition Authority to suggest that superpubs are necessarily a negative development, particularly when they are most likely demand-driven, fuelled by the wants of particular consumers rather than an overall unsatisfied demand for alcohol. If the advent of superpubs is, however, held to be a negative development, then an appropriate policy might be to have proposed premises above a certain

size require the extinguishment of two or more licences: this was suggested to the Competition Authority in a VFI submission in June 1997.

(2) Standards

The Competition Authority has frequently stated that there would be no loss in standards under deregulation because licence holders would have to comply with health and safety regulations. However, it is naïve of the Authority to suggest that standards will not fall – minimum legal standards might not fall but existing standards above the minimum standards will fall. This has been reported to be the case in England.

(3) Underage Drinking

At an individual and industry level, publicans are particularly concerned about underage drinking: it can create a stigma for the law-abiding, individual publican and creates a bad reputation for the industry's image. It has been acknowledged by a variety of sources, both international and domestic – including the Department of Health – that an increase in the number of alcohol outlets will increase the incidence of underage drinking and other alcohol abuse. This is among the principal reasons why further deregulation of the trade is opposed.

Despite the almost universal acceptance of this relationship, some might argue that given that Ireland already has a crisis problem with underage drinking, then it is evident that controlling the number of outlets in the State has not been working as a measure to control abuse. This is an incorrect assertion. The correct interpretation is that controlling the number of alcohol outlets *alone* has not worked. Other measures need to be introduced in conjunction with regulating the number of outlets. Among these measures should be information and education programmes. These would supply young people with information that allows them to make more rational decisions about drinking. They become better informed about the consequences of drinking at a young age.

It would be nonsensical to replace the current limit on the number of outlets with an increased excise tax in order to curb underage drinking. Moreover, three measures to control alcohol abuse must be in operation simultaneously. In this country, two are in operation: (1) significant excise taxes already exist and (2) a limit on the overall number of outlets in the State exists – what has been lacking is a significant information and education programme to change the behaviour of potential alcohol abusers, young and old. While some might argue that an even higher excise tax would be the most direct and successful means of curbing underage drinking, then why do other countries have much lower incidences of underage drinking even though they have lower excise taxes? Clearly, they have better education programmes. Notwithstanding this observation, higher excise taxes will, in any event, increase prices for all consumers – thereby countering the most popular argument for deregulation, i.e., a predicted lowering of prices.

Indeed, perhaps it is the case that we already have too many alcohol outlets in this country and this is one of the contributory factors to the high underage drinking problem. In this regard, the Commission should heed the results of the most recent survey evidence. A national survey, conducted by Lansdowne Market Research between January 12th and 23rd 2001, revealed that 94% of adults believe that there are either too many, more than enough or a sufficient number of alcohol outlets in the country. Only 6% of adults believe more off-licences are needed.

Discussion Document 09/03/2001

The main issue to be decided is whether a new licence to sell “off” should be recommended. The argument being put forward by those advocating new licences is that:

- (a) New licences will increase competition and
- (b) the present system is protectionist and cartel-like.

In addressing the above argument it is important to bear in mind the following points:

1. Over 94% of the consumer/public do not want extra outlets for the sale of alcohol.
Source: Sunday Independent, March 2001 – survey carried out by Irish Marketing Surveys.
2. Increased availability of alcohol leads to increased consumption.
Source: Department of Health submission to the Commission, February 2001.
3. Only stand alone specialist off-licences and multiples are competitive. Any retail outlet using alcohol as an add-on product is substantially more expensive for alcohol.
Source: NOffLA oral submission, February 2001.
4. The number of Off-Licence premises has doubled in the last ten years.

If a new licence were created (without the need to extinguish) there would be a need for many checks and balances in order to avoid alcohol being sold in every retail outlet (i.e. Newsagents, sweet shops). The following checks and balances have been suggested:

1. In a mixed trading environment alcohol would be sold in a separate area.
2. Over 21's should only be allowed to serve and sell alcohol.
3. No drinks licence should be given to any outlet where a substantial percentage of the target customer was under eighteen.
4. A substantial licence fee would be levied to ensure the responsibility of those seeking licences.
5. No alcohol to be made available for sale in petrol forecourts.
6. All applications for licences to be made through the District Court.
7. A tax clearance certificate would be necessary.
8. One licence only (the ceasing of the Wine Licence).
9. Stringent planning controls (proximity to schools etc.).

There would also be the issue of compensation to those 11,000 licensees that would see their “property right” decline by elimination of the “value of the licence attached to their premises”. This would not just entail the value of their licence but the goodwill etc. created by their business and property rights.

In conclusion, I would recommend the report covering two strands.

While the Intoxicating Liquor Act, 2000 did not solve all the problems, it did create easier access to the market. A licence has tumbled from £125,000 in June 2000 to a present £70,000. During the life of the Commission this amount will fall even further, thus giving easier access to the market.

Strand 1

Implement all the other issues that have been agreed including I.D. cards and dormant licences.

Re-visit the off-licence section before the end of tenure of the Commission. If the cost of entry to the market has not reduced to an agreed level then implement *Strand 2* which will embrace the new licence with agreed checks and balances.

This would give time to see:

1. The real effect of the Intoxicating Liquor Act, 2000.
2. If the price of the licence will fall even further. The fact that we are flagging the potential new licence may cause further reduction.

If the price of the licence came down to an acceptable level this would also reduce the amount of compensation and may not require time consuming legislation.

Jim McCabe.

The case for removing the quantitative restriction

The issue to be addressed by the Commission is whether the quantitative restriction on liquor licences, specifically on off-licences, which requires that an existing licence be extinguished before a new licence issues, should be removed from the licensing code. The requirement constitutes a barrier to entry to the business and thus restricts competition.

It is submitted that the Commission should have regard to the following in making its decision:

- Competition in markets for goods and services benefits consumers.
- Government regulation which restricts competition is justified only insofar as it serves a clear public interest and is proportionate to that objective (of course, it also serves private interests in that it protects incumbents in the business concerned from competition).
- The Commission’s task is to seek the appropriate balance of public interest considerations, not to balance public interest considerations against private interest considerations.

In the area of liquor licensing, the issue facing the Commission is whether the quantitative restrictions contained in current licensing law serve some public interest and, if so, whether they are proportionate to that objective. The public interest cited to the Commission focuses on the problems associated with excessive consumption, both underage and overage, resulting in health problems, road traffic accidents, public order offences and domestic disputes. The Commission has been told that research has clearly established that consumption is positively related to both alcohol availability and density of outlets. It follows that any measure which increases availability and outlet density will tend to be associated with increased consumption (although the direction of the causality is not clear) which raises concerns about the problems associated with excessive drinking.

None of this is disputed (although the relationships are clearly complex and many other factors contribute to the problem). However, the key question is whether the current licensing laws do restrict alcohol availability and outlet density, thus reducing alcohol consumption. At the very least, it would have to be conceded that they do so very ineffectively as the problems currently being debated have developed under the current licensing regime. We would go further in contending that they do not restrict availability to any appreciable extent. Demand has been met under the current licensing regime by a variety of means such as the expansion of existing premises and the “creative” use of atypical licences (e.g. club licences, theatre licences, hotel licences). Alcohol is freely available even in areas with a low pub density and, indeed, it can be argued that the means by which demand has been met in those areas have compounded control problems. Where the number of pubs is restricted, as in Dublin, the response of the industry has simply been to increase the size of existing premises, thus allowing more alcohol to be sold. Common sense suggests that it is much more difficult to control underage drinking in large, anonymous premises than in small, neighbourhood bars where customers are generally known to proprietors and staff and the control problems posed for the Gardaí by clubs have been clearly pointed out to the Commission. Indeed, the current level of under-age drinking in Ireland strongly supports the view that the current licensing system is not an effective guarantor of standards, and that meaningful penalties and strict enforcement are far more effective deterrents.

As regards density, the current laws have served to reduce density in some, mainly urban, areas but have increased density in other, mainly rural, areas. The latter effect results from the fact that the current laws, as pointed out by the Competition Authority, operate as a barrier to exit from the business as well as a barrier to entry to it. Evidence has been placed before the Commission to the effect that (a) a significant number of licensees (some 400-600) engage in no or minimal trading, (b) 65% of current licensees do not make a living from the business and (c) the overall ratio of licences to population is high by international standards.

It is clear that this market does not function normally and that the licensing system has operated to induce a significant number of licensees, perhaps thousands, to retain their licences whereas, otherwise, they would have exited the business. It seems likely that removal of the quantitative restriction, while it would undoubtedly increase outlet density in some areas, would reduce it in others to at least an equivalent extent. Thus fears of a “proliferation” of new licences are unlikely to be borne out. The current situation has developed over almost a hundred years. Given the appropriate checks and balances, the removal of the quantitative restriction is likely to result, not in a “doomsday scenario”, but in a gradual shift in the geographical pattern of supply to meet demand over time.

Accordingly, the evidence before the Commission does not support the contention that the current licensing laws constitute an effective instrument for combating the social problems associated with excessive drinking. Indeed, they may act in a perverse manner to undermine other such policy instruments. They do, however, by restricting entry to the business, constraining competition and creating a cartel-like atmosphere in the business, operate to the consumer’s detriment. They may also contribute to a binge-drinking culture, since they encourage drinking as a social activity in its own right, rather than in association with other activities.

In conclusion, the balance of public interest considerations clearly weighs in favour of the removal of the quantitative restriction. The problems associated with excessive drinking would be far more appropriately dealt with by carefully targeted measures aimed at improving enforcement and educational provision.