INVITED COMMENTARY

ALCOHOL LICENSING LAWS: PROPOSALS FOR CHANGES IN SCOTTISH LAW

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Abstract — Scotland, England and Wales, and Ireland have each recently reviewed how licensing laws might influence the increasing levels of alcohol-related problems in each of these countries. Each legislature has arrived at somewhat different recommendations. Scotland may move towards liberalization, albeit within firm guidelines. It is unknown whether emphasis on local review, server training and some restrictions on bar venues offering discount pricing, will be sufficient to alter current trends in alcohol-related problems.

INTRODUCTION

How far can licensing laws influence patterns of consumption and levels of alcohol-related problems in the community? This question has been considered recently in Scotland, England and Wales, and Ireland. Each legislature has arrived at somewhat different solutions. This paper will concentrate on the Scottish experience.

LICENSING LAW IN SCOTLAND

In August 2003 the Nicholson Committee published a review of Licensing Law in Scotland (Nicholson Committee, 2003). Licensing legislation has a long history in Scotland and its content has always differed significantly from that of England. For a long period it was more restrictive, although not so in recent years. The first licensing legislation, making it a requirement to register to sell alcohol, was introduced in 1756. In 1887, the Hours of Closing Act fixed closing time at 10 p.m. in all but the largest cities. There was a gradual evolution of licensing laws during the 19th century, culminating in the Licensing Act (Scotland) in 1903. The regulations imposed at that time persisted with some minor changes, until the 1962 Acts that provided for standard permitted hours for the whole of Scotland and for Sunday opening (largely restricted to hotels). In 1971, a committee under the chairmanship of Dr Christopher Clayson was formed, with many of its conclusions incorporated into the Licensing (Scotland) Act 1976, which formed the basis of licensing law to the present (Clayson Report, 1973). One of the basic aims of this legislation (see attached interview in Appendix) had been to reduce the pressure to drink in a concentrated way and remove some of the adult mystique surrounding drinking places. It recommended longer opening hours and the option of requesting special dispensation to open for extended hours. Contrary to expectations these extensions became the norm in many parts of Scotland.

The Nicholson Committee was faced with a worrying prospect — evidence of increasing alcohol-related harm, concerns about public order, most conspicuously the evidence of rising drunkenness amongst teenagers, in which Scotland appeared to have one of the most dismal records in Europe (Hibell et al., 2000). There was also an evident change in the character of city centres and a growing ‘night time economy’ with large super-pubs and clubs, which posed a challenge to maintaining law and order and safety. The committee had consulted widely and was made well aware, for instance by the Intercollegiate Group of Scottish Medical Colleges and the Medical Council on Alcohol, of alcohol misuse as a public health issue. There were also two well-respected and well-informed doctors on the committee itself. The congregation of hundreds of drunk young people in certain parts of the city had increased the risk of the well-known consequences of intoxication, injuries, accidents and the acute effects of alcohol overdosage. Public Health statistics also pointed to a rise in alcohol-related damage. Deaths in Scotland due to excessive alcohol use doubled between 1990 and 2000, with a seven-fold higher rate in deprived, compared with affluent, neighbourhoods. Acute admissions to hospital associated with alcohol increased five-fold between 1980 and 2000. These and other health concerns are referred to in the Nicholson Report (Nicholson Committee, 2003).

An additional concern was the escalation of underage drinking in Scotland. One factor in this may have been the enormous growth in the number of off-licences, where it is easier to buy in an opportunistic way, and the difficulty in regulation makes it easier for underage children to purchase alcohol. Research in Edinburgh commissioned by the committee revealed that the most commonly quoted source of alcohol for these 15-year-olds was ‘a small licensed grocer or corner shop’ (Nicholson Committee, 2003).

One of the first steps of the newly formed Scottish Parliament was to set up an advisory committee on alcohol misuse, which launched an Alcohol Action Plan in January 2002 (Scottish Executive, 2002). This contained a range of measures designed to reduce the level of alcohol-related harm in Scotland. It particularly expressed concern about the damage caused by binge drinking. The extent to which licensing legislation can be used to modify the culture of drinking, and particularly reduce bingeing, is one of the fundamental questions posed by the Nicholson Committee report.

The committee acknowledges the acute and long-term harm that is associated with alcohol use and the negative impact that
it can have on the quality of life of others in the community. In response to these concerns the report observes: ‘Upon one view they could quite rationally lead us to recommend very Draconian measures in order to control the availability and the consumption of alcohol.’ However, in a key decision they determined that such measures would ‘disadvantage the majority of the population who consume alcohol within sensible limits and would therefore meet with considerable public resistance.’ The report adds: ‘We believe that such measures would be politically unacceptable, would be commercially disastrous and might well simply create more problems than they would cure.’ In the report, the commercial and political problems that might ensue are left to the reader’s imagination.

The report emphasizes the need to balance the harms and the advantages of greater flexibility in licensing and acknowledges the changes that have occurred in society since the Clayson report. The compilers of the report were concerned that much licensing legislation had grown in a piecemeal way and was often inconsistent and not reflective of contemporary society. They spell out principles that should underpin future licensing decisions:

‘Any legislation following on this report should set out certain guiding principles or objectives which are to be the underlying basis for any decisions made by licensing boards. Those principles or objectives should be: (a) the prevention of crime or disorder; (b) the promotion of public safety; (c) the prevention of public nuisance; (d) the promotion of public health; and (e) the protection of children from harm.’

In the light of these principles the committee proposed ninety recommendations. Licences should be reduced to essentially two forms: a ‘premises licence’, which will specify the nature of the operations that will be carried out in the premises. This licence will not have a time limit but variations in practice would require review by the licensing authority. This licence could be varied, suspended or revoked in the event of a complaint being made to the licensing board. The other form of licence will attach to the person who will be expected to have received appropriate training and qualifications for the role and ensure that their staff are also trained. This training would include an understanding of the hazards of alcohol misuse and measures for avoiding this.

One of the most controversial and, Nicholson claims, misunderstood recommendations was to abolish the statutory permitted hours and replace them with opening hours negotiated and agreed for specific premises with the local licensing board. These extended hours would also be available to off-licences, most notably all-night supermarkets. In view of the evidence that underage drinkers most often obtain their alcohol from off-licences, some would question the wisdom of significantly enhancing availability in this form. The new measures represent a significant liberalization of controls. These are tempered by the guiding principles but with greater scope for local variation and responsiveness to concerns in each community than hitherto. A further safeguard is the creation of Liquor Licensing Standards Officers who will supervise and monitor the operation of the licensing system in each licensing board area.

Licensing boards will be required to produce policy statements indicating their expectations and mode of operation. In addition to the board there will be a licensing forum whose members will come from a variety of backgrounds. They will have the task of reviewing the activities of the local licensing board and raise matters of local concern. It is hoped that this will include concern about the impact of their decisions on health and safety and the quality of life in their neighbourhood. This should help to make boards more accountable locally for their decisions. A ‘National Licensing Forum’ will be appointed under the chairmanship of the Minister for Justice and the Minister for Health, which will review practice and advise on problems and difficulties that may arise. There will also be national guidelines on practice and training for licensing board members as well as individual licensees. It is to be hoped that these initiatives at a national level will also include effective monitoring of the impact of these changes on the level and pattern of alcohol consumption and measures of alcohol related harm.

The problem of underage drinking is to be approached by means of a national proof-of-age scheme. This seems sensible, although, as the report points out, current voluntary schemes have not demonstrated their efficacy. The controversial issue of children in pubs is tackled in a forthright way, the report asserting that persons ‘under 18 have a full right of entry to licensed premises of any kind’ but restrictions may be enforced as part of the ‘operating plan’ for particular premises. This does not permit those under 18 to drink alcohol in a pub except for those between 16 and 18 who would be permitted wine and cider or beer if taken with a meal.

The National Alcohol Plan and the Nicholson Report are concerned with binge drinking and believe this is encouraged by promotional activities such as ‘happy hour’ which some have pointed out are rarely sixty minutes and rarely ‘happy’ in their consequences. These promotions are dealt with by reaffirming the principle described above. ‘There should be a standard condition attached to all premises’ licences to the effect that nothing must be done by way of promotional advertising or discounted prices that encourages excessive drinking.’ Control of irresponsible practice is left to local interpretation and the liquor licensing standards officers. This raises a major concern: will local forces be sufficient when the interests of industry, trade and tourism are balanced against concerns for health and public order?

Taken overall, the licensing principles are sensible, and with goodwill and firm guidelines, may achieve their objectives. They are similar in many respects to the proposals for England. Looked at from another perspective, some will be astonished that widespread concerns about the consequences of public drunkenness have been met by greatly increasing the potential availability of alcohol. The success of the balance achieved will rest on the efficacy of training, strength of guidelines and willingness to restrict or annul licences when problems become evident. The imposition of sanctions should be more effective and rapid than at present, where licensees only have to appeal to delay action by several months. The range of permitted objectors seems narrow: residents in the vicinity of the premises, local community councils, certain officers of the local council, health and safety officers and chief constables for instance. In Scotland, virtually no medical persons are employed by local councils and this could result
in broader medical perspectives being excluded from the list of permitted objectors, although the Board may seek observations from any source that it believes appropriate.

In England and Wales the Minister for Sport and Tourism has day-to-day responsibility for licences. A new Licensing Act was adopted in 2003 (HMSO, 2003). As in Scotland, the liberalizing drift of the provisions will be balanced by centrally produced guidelines which have yet to be agreed. Ireland is committed to a different, somewhat more prescriptive course, (Minister for Justice, Ireland, 2003) with greater control and restrictions. All three countries have acted in response to similar concerns about the damage alcohol is causing in their societies, most notably binge drinking, but they have reacted in different ways. A natural experiment is in the making; we should ensure that the outcomes are measured.

Both the Scottish and English reports on licensing appear to contradict the belief that increasing availability will lead to increased consumption, which in turn will be associated with greater levels of alcohol related harm. However, this is countered by the emphasis on local controls that will refine the national guidance to suit local needs and allow swift and meaningful penalties when these are transgressed. Some fear that this will be a lawyer’s paradise, with interpretation of the guidelines being subject to Jesuitical questioning.

CONCLUSIONS

Licensing is only one part of the influences that need to be borne in mind in developing an effective community response to alcohol-related problems (Holder, 1999). It should be seen as part of national strategies aimed at reducing the level of harm and particularly reducing binge drinking. Many questions are unanswered, for instance, the extent to which binge drinking, which is a long-established part of northern European drinking styles, can be influenced by trying to restrict special promotions; the consequences of liberalization, albeit within firm guidelines, at a time of increasing alcohol-related problems; and the impact of server training, recently questioned by Stockwell (2001).

It is encouraging that the health consequences of alcohol have been acknowledged throughout this report and that a medical presence is envisaged in the National Forum, which will oversee the impact of the Act. It is hoped it will use its authority to evaluate and monitor the Act and act quickly to introduce changes if deleterious consequences are evident. The report contains much carefully considered evidence and makes an impressive attempt to establish principles for the future and balance competing interests. In the end it places a great deal of faith and responsibility in the wisdom and responsiveness of local licensing boards. Time will show whether this confidence is justified.

REFERENCES and FURTHER READING

APPENDIX

Reducing the pressure to drink?

Extracts from an Interview by Associate Editor, Professor Martin Plant, with Dr Christopher Clayson, Dumfriesshire, Scotland, UK, on 17 April 2003. Dr Clayson was Chairman of the Departmental Committee on Scottish Licensing Law and produced a report in 1972 that led to the controversial ‘liberalization’ of Scottish liquor licensing. A new review of the Scottish Licensing arrangements has been conducted by Sheriff Principal, Gordon Nicholson, who reported in August 2003.

Dr Clayson had his 100th birthday on 11 September 2003. Professor Plant began by asking why the Clayson Committee of 30 years ago was set up.

C.C.: A general unease over the misuse of alcohol had been growing from year to year. There had not been a review of Scottish licensing law for a long time. The Government decided that there should be a review, but why I was asked to chair it is a mystery. Previously such reviews had been in charge of a distinguished lawyer, but on this occasion they decided that a doctor should be given the opportunity. This may have reflected growing unease on the health problems arising from alcohol misuse. I can only suppose that was a factor in the establishment of the committee, which represented all interests or most interests in public life.

M.P.: What was the committee’s remit?

C.C.: We were to report on licensing changes that would be useful for the future. Current licensing laws were obviously failing. The Scottish Office was looking to the future.

M.P.: I remember hearing you talk about drinking in Scotland shortly after your report was published and a phrase that you used with a lot of emphasis was ‘the excessive pressure to drink.’

C.C.: That’s right. We were aware that the licensing law in England and Wales had for about 50 years been much more relaxed than in Scotland. Even so, in England and Wales it seemed that the consumption of alcohol was just about the same as in Scotland per head of population. The income per head of population was just about the same and yet in the more restrictive licensing conditions of Scotland the misuse of alcohol as indicated by the various offences that were being committed was far worse in Scotland than in England. This was one of the things to which we paid special attention.

M.P.: So the Scots are like the Scandinavians, the Icelanders or the Finns who have a predilection for intoxication?

C.C.: Yes, I think that in these northern parts of Europe, they rather preferred spirits and even in Scotland, of course, that was perhaps true. Possibly it was felt that spirits were needed to maintain ‘the vigour of the race’ as distinct from beer and lager, which perhaps dispose the English to more contemplative pursuits.

M.P.: What were your Committee’s main recommendations?

C.C.: The main recommendations were the extension of the licensing laws to create longer periods of time in which alcohol could be consumed, reducing as we hoped the pressure to drink, which obtained with restricted hours. We recommended about a 30% or so increase in the time allowed for consumption of liquor.

M.P.: I remember some individuals were enthusiastic about these changes. Others warned that it was ‘opening the floodgates’ and would make matters worse.

C.C.: Oh yes, that was very obvious in the evidence we were being given at the time and indeed it’s very interesting the alcohol industry was against any relaxation.

M.P.: Why was that?

C.C.: Because any relaxation would mean they would have to employ more staff. Later on, when they got to see the details of what was being accepted, they realised that, yes, this was right and they met the problem of increased staffing.

M.P.: What was the reaction of, for example, the Scottish Office (as it then was), or the medical profession, to your proposals?

C.C.: I think the Royal Colleges were favourable. The same can’t be said for the medical journals. The editors of medical

Dr Christopher Clayson.
journals were inclined to follow the feelings of the immediate reaction of the time. One editor accused us of operating a ‘rollicking irresponsibility.’ That was a bit hard I thought and some of the others were the same, though later on such criticism vanished, as it was appreciated what were trying to do.

M.P.: Your committee was far more successful in achieving policy change than the equivalent body in England and Wales chaired by Lord Errol.

C.C.: That is true. I kept in touch with the Errol Committee, visited them a couple of times and saw them in operation. They, of course, started with more relaxed conditions than we had in Scotland, so perhaps to that extent the urgency for change was not so great as it was in Scotland. That was quite an important point. The more urgent need in Scotland was met by the Government, albeit reluctantly. They didn’t give us all we wanted. The answer to your question is I think that all of the measurable evidence concerning the misuse of alcohol showed that the situation was much worse in Scotland than it was in England and Wales. After a few years of the new licensing laws, I think it could be probably said that Scotland was in a better position than it had been before.

M.P.: One thing that appears to have improved is the officially recorded level of drunkenness. In the year that your report was published, nearly 12,000 people were convicted of drunkenness offences. These have declined to about 700 people a year.

C.C.: Yes.

M.P.: Do you have any view on the extent to which this is just a change in police policy or are the Scots really getting drunk less often than they did before your recommendations were put into effect in the 1970s?

C.C.: Now that is a very difficult question to answer. I like to think it is in part due to the relaxation we achieved, even though that relaxation was not what we had asked for. Yes, maybe several factors have been at work. The licensing law is possibly one of these, but I think an important one.

M.P.: Another indication that has been encouraging is that there was a fall of about 50% in the numbers of people in Scotland convicted of drinking and driving. Those figures suggest that something good may have been happening in the last 30 years. Even so, deaths from liver disease and hospital admissions for alcohol dependence have been rising too.

C.C.: Yes, but even so, I’d like to think that my Committee achieved at least part of what we set out to do.

M.P.: Now, 30 years on, another committee is reviewing Scottish licensing arrangements. Do you think the situation is very different from the 1970s in terms of the kind of problems that we are confronting or the sorts of challenges this kind of review has to face?

C.C.: No. I think the problems are the same in a way. Scotland has improved but there is still a long way to go. Our recommendations to the Government were that the licensing hours should be extended by about 30%. I think I am right in saying the Act only gave us about 16% of an increase so there is room for further relaxation to promote relaxed drinking.

M.P.: I recall that people ‘compensated’ for the fact that pubs shut at 10 p.m. by carrying home several carrier bags of lager. This practice seemed to stop once opening hours were extended.

C.C.: Yes that’s quite true. Its what they used to call the ‘10 o’clock swill.’ This was not replaced by the 11 o’clock swill. Initially that was quite clear-cut. This reinforces my impression that we were on the right lines and I hope the same right lines will advance in time to come.

A drinking environment for families, and tourists

M.P.: It is my impression that Scottish bars are far more civilized and congenial now than they were 30 years ago. There is more attention to providing food, decent décor and other amenities than was the case in the early 1970s.

C.C.: I’m sure that’s right. But again they didn’t go as far as we had wanted them to. Our hope was that families would be encouraged to take their children and as a family take refreshment in the pub. We laid down a series of conditions that would have to be met for this relaxation to be achieved. That was thrown out very vigorously indeed.

M.P.: Do you know why?

C.C.: The Secretary of State for Scotland said that allowing children into pubs in these circumstances ‘was not in accordance with current Scottish drinking practices.’ Maintaining these practices was not our remit. We hoped to change them. We were planning, not current Scottish drinking practices, but those for the rest of the century as we saw it and beyond. Maybe the time will come when family visits to pubs under sensible relaxed circumstances will be possible. You never know. I hope that will happen.

M.P.: Do you think that there is scope for further extension of licensing arrangements? You have already mentioned the fact that we don’t really have ready access to licensed premises for families and I have always been rather struck by the fact that if you go into a Scottish bar, children may sit in one room, but you have to walk into another area to buy the alcohol.

C.C.: That is contrived. Yes, I don’t like that. Our recommendations were designed to remove that, but our recommendations weren’t all accepted. I hope that this can be changed in future. We recommended that cafes should be allowed to dispense alcoholic refreshments as part of a snack if requested by customers and the children in the family could drink mineral water or other soft drinks. I think the Government accepted that, but unfortunately, we should have foreseen this would not be known as our ‘refreshment licence’. It would be called a ‘café pub’ and that of course killed it. Although it’s still law I think the number of such licences in existence today is very much smaller than we had hoped. I remember the ‘residential licence’ I think they called it. In the case of bed and breakfast facilities, the owner of a B&B might offer guests a drink in the evening. The Government of course rejected that on the grounds that a restricted hotel licence would serve the same purpose. This was exactly what the B&B people did not want, since a restricted hotel licence would allow outsiders to come and drink. No, this was not what the B&B people wanted. It was for their guests alone. The Government also rejected that. I am sure it would benefit Scottish tourism, if B&B establishments were allowed such an arrangement.

M.P.: There are very few restricted hotel licences. During 1972 there were 270 there are currently about 500. The main increase has been in licensed restaurants. These have increased from a mere 44 in the 1950s to roughly 1500 now.
Closing time

M.P.: Although there were objections in the early days, it seems most Scots are content with the kind of licensing arrangements that your committee recommended. They are now part of the familiar scene. Do you think there is scope for improvement?

C.C.: I wouldn’t alter direction. I simply think that the restrictions that the Government imposed on us should be relaxed. To reduce the pressure to drink, it seems logical to allow more time.

M.P.: Instead of pubs and bars shutting at the same time, it has been suggested that bar owners choose their closing time. It might ease the pressure on the police that is caused at the moment by large numbers of people flooding out of pubs and potentially causing problems.

C.C.: One of the things we proposed was that the licensing hours within the stated limits should be at the discretion of the licensee. I don’t think that was accepted as far as I can remember in the Act. I think we made a point about this but never went so far as to suggest any planned variation within the permitted hours on an area basis. We merely left it at the discretion of the licensee, who might for instance, like to open at 6 a.m. to accommodate the requirements of journalists or others coming off night shifts.

Age restrictions

M.P.: In southerly parts of Europe there is a tradition that people teach their children to drink.

C.C.: I think that children should be introduced to alcohol within the family circle not as some form of excitement but as part of the normal process of growing up. I am sure that parents have an important role here. It could be very helpful.

M.P.: Would you like to see the minimum age at which people can buy a drink in a pub be changed from 18?

C.C.: We did discuss this. Our conclusion was that 18 was right. Reduce it to 16, and then people at 14 who look a little older would soon be coming in. I would be very interested to hear what Sheriff Nicholson would have to say about that [Ed.: Nicholson has retained 18].

M.P.: Dr Clayson, thank you very much indeed. It has been a real pleasure to talk with you.