

Submission of the Competition Authority to the Liquor Licensing Commission

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EXECUTIVE SUMMARY

Restricting competition has failed to address social problems associated with alcohol.

The existing legislative framework, which restricts competition, has at the same time failed to limit alcohol consumption. Legislation passed 100 years ago limited the total number of pub licences and restricted them from moving from one area to another. Despite consistent enforcement of these restrictions, the overall level of alcohol consumption and the incidence of social problems associated with alcohol consumption, specifically binge drinking, alcoholism, and underage drinking, have increased steadily.

The main effects of restricting the freedom to establish new pub businesses are:

- i. Where demand has increased, existing premises have responded by growing in size, resulting in the demise of the traditional pub and the emergence of very large drinking establishments.
- ii. Where demand has fallen, existing licences have become unprofitable but appear to have been retained because of their value as an asset. The high value that currently attaches to rural licences arises not because of the trade they generate but rather because they offer an option to trade elsewhere or in the future. Ironically, the removal of the restriction on the total number of licences could see the total number of licences fall.
- iii. The market cannot respond fully to the broadening of consumer tastes and preferences. Thus, while the Irish pub concept has expanded outside Ireland, international trends and cultures such as cafés-style bars have had limited impact in Ireland.
- iv. The restriction on competition and resulting high value of licences in certain urban areas makes the sale of alcohol a high margin activity. Higher margins on alcohol are likely to encourage the exclusive sale of alcohol, rather than its association with other activities, thus perpetuating social problems.
- v. Where licences are scarce, consumers pay higher prices for alcohol for a given level of service quality. This gives excess profits for suppliers. Upstream input suppliers, including labour and the manufacturers of alcoholic beverages, absorb some of these excess profits. The remainder is capitalised in the value of existing licences. Licences have been traditionally more valuable where the restriction on competition is most severe. A rough estimate of the total value of all licences in Ireland is in excess of €1,000m. The total cost to Irish consumers is probably closer to €2,000m.

Some argue that the restriction of competition is justified because, by raising prices, it reduces alcohol consumption. The restriction of competition as a means of raising prices is less desirable than direct taxation (e.g., excise duties) for several main reasons. First, revenues go to sellers of alcohol, not to the State. Second, the higher retailer margins on alcohol give incentives to sell greater quantities. Third, it is a crude instrument as it imposes a higher cost on consumers in areas where licences are scarce, and is not therefore uniform across the country. If higher prices are desired for policy reasons, direct taxation is more efficient, equitable and effective.

Another often heard argument in defence of the existing regime is that restricting the number of outlets makes it more difficult to buy alcohol. In other words, restricting supply reduces demand. There appear to be several flaws in this line of reasoning. First, restricting the number of outlets has not restricted supply because existing outlets can (and as we have seen do) expand: over the period 1965-1996, alcohol consumption more than doubled while the supply of licences remained relatively static. Second, it does not apply uniformly across the country: to be consistent and equitable, such a policy would require mass withdrawal of pub licences in rural areas. Third, policies that reduce demand for alcohol are more likely to reduce consumption than policies that reduce its supply. Yet again, direct taxation is more efficient, equitable and effective.

Limiting the number of outlets but not their size may not do much to address social problems, and may serve to make matters worse. For example, large anonymous outlets may make the control of underage drinking more difficult to police, damage incentives to encourage socially responsible sale of alcohol, and make the control of drinking and driving more difficult. These, and other social problems, may require a more focused and targeted policy response.

Generally, the current method of licensing restricts the freedom of establishment in business and the freedom of consumers to consume alcohol in locations of their choice. It is not proportionate to any stated public policy objective and in fact may not be effective in any way in addressing the health and social concerns associated with alcohol consumption. Proportionality requires that only those policy instruments that achieve their objective in the least distortionary manner should be implemented.

Recommendations

The existing restrictions on competition and on the freedom to establish in business have not worked to limit the social problems associated with alcohol consumption. Moreover, they impose an unnecessarily high cost on consumers and are disproportionate. The Authority recommends:

- i. That the licensing laws be amended to remove the requirement to give up a licence in order to open a new establishment, thereby allowing the total number of

licences to be determined according to consumer needs. This may, somewhat counter intuitively, result in a fall in the total number of licences.

- ii. That the licensing acts be amended to remove the references to the adequacy of existing supply as a criterion for the District Court in deciding whether or not to grant a new licence. The burden should be on the new entrant, not the Court, to assess the adequacy of existing supply. If entry is commercially viable, it is self-evident that existing supply is inadequate. Conversely, if existing supply is adequate, the entrant will not succeed. The remaining licensing criterion regarding the suitability of the applicant and of the premises should be sufficient to prevent undesirable social problems arising.

Policies that reduce demand directly are more likely to reduce consumption than those that reduce supply. Accordingly the Authority recommends:

- iii. That direct taxation should be used to influence the price of alcohol. To the extent that the trend of increasing average alcohol consumption is a social problem and that consumption is price-sensitive, tax rates should be raised.
- iv. That some fixed proportion of the tax revenues from alcohol should be earmarked for programmes designed to tackle problems associated with the consumption of alcohol. While such programmes should be targeted at the underage, there should also be an emphasis on informing society in general, not just of matters relating to health, but also in relation to ambiguous attitudes toward underage drinking, binge drinking and other problem patterns of consumption.
- v. That the Commission consider whether targeted taxation is a useful policy instrument. Examples of targeted taxation are higher rates late at night, lower rates when consumed with food in restaurants, different rates for different types of alcohol.
- vi. That the Commission examine other policies that reduce demand, particularly where it is directly linked to social problems, in targeted ways.

While policies that restrict the total supply of alcohol are likely to be less effective or efficient than those that act on aggregate demand, targeted supply side policies may be extremely effective.

- vii. That the Commission consider measures that would place a greater positive duty or liability on the vendor, especially at the point of sale. Examples include (a) the licensing of individuals to sell alcohol, (b) compulsory training in the responsible sale of alcohol, (c) an accredited qualification in the responsible sale of alcohol, or (d) increasing the legal liability of vendors.

- viii. That the Commission examine international experience in the use of targeted policies to address social problems at the point of sale.

The 2000 Liquor Act introduced important changes to the enforcement tools available. The Authority recommends:

- ix. That measures to improve the enforcement of existing laws be strengthened, possibly including the allocation of revenue from any increased taxation on alcohol towards supporting enforcement.

Many of these recommendations are addressed primarily to the Commission. The Authority has not at this stage taken a final view on many of the possible alternatives available. The Commission is the body with the appropriate expertise to examine these issues and the Authority encourages it so to do, and offers its expertise in the economic and legal analysis of competition and regulation to assist the Commission's analysis of these and other issues.

1 INTRODUCTION

On the 14th November 2000, the Minister for Justice, Equality and Law Reform established the Commission on Liquor Licensing. The first point of the Commission's terms of reference is 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 modern society.”

This document is the Authority's second submission to Commission and, in accordance with the terms of reference, focuses on liquor licensing reform as a means of improving the competitiveness of the retail drinks sector in the interests of consumers while being mindful of the special health and social issues associated with the consumption of alcohol.

A key factor informing the Authority's perspective has been the principle of proportionality. That is, only those restrictions or regulations that achieve their objective in the most efficient and non-distortionary fashion should be retained. Where more effective and non-distortionary alternatives are available, these should be implemented.

The remainder of the document is structured as follows:

- Section 2 outlines the historical background to legislation governing the retail drinks sector and summarises previous attempts at liquor licensing reform.
- Section 3 describes the current supply and demand characteristics of the market.
- Section 4 examines current international experience of liquor licensing reform and in particular the approaches adopted in England and Wales, Scotland and the US.
- Section 5 analyses the economic effects of entry regulation in the Irish market.
- Section 6 looks at liquor licensing reform in the context of health and social issues and examines the range of policy instruments available.
- Section 7 draws together the issues and makes recommendations.

2 BACKGROUND

2.1 *Liquor Licensing Law pre-2000*

2.1.1 *Relevant Provisions*

Prior to the Licensing (Ireland) Act, 1902, (the “1902 Act”) any person could in theory apply for a licence to sell intoxicating liquor. The 1902 Act represented a watershed in the development of liquor licensing law by introducing limits on the issue of new licences. Under this new licensing regime incumbents were protected from competition in various ways.¹ The 1902 Act provided that:

“From and after the passing of this Act no licence shall be granted for the sale of intoxicating liquors, whether for consumption for on or off premises...”

(Section 2 of the 1902 Act)

The narrow set of statutory exceptions to this restriction on the issue of new licences are briefly outlined as follows. To qualify for a new licence the applicant had to extinguish one existing licence and be engaged in:

- the revival of an existing ‘dormant’ licence;
- the alteration of an existing premises; or
- a move to another premises in the immediate vicinity due to the expiry of a lease or destruction or compulsory purchase of the prior existing premises.

Alternatively, a new licence could be issued to:

- a rural premises provided it was not situated within one mile of an existing premises of the same character as one granted before the passage of the Intoxicating Liquor Act, 1960 (to come within this exception the applicant had to extinguish two existing licences); or
- an urban premises provided an increase in population of defined proportions had occurred in the relevant town or city (to come within this exception the applicant had to extinguish one licence from the same district as that of the proposed new premises).

¹ That protection from competition for incumbents was not the original intention of the 1902 Act is clear from *Re Powers Supermarkets* [1988] IR 206 where the court stated:

“The object of the (Acts) was to safeguard the public interest by preventing a proliferation of licensed premises ... and not to shelter existing publicans from competition.”

The urban/rural delimitation was not determined on the basis of the plain meaning of such words. There were five county boroughs (Cork, Dublin, Galway, Limerick and Waterford), five municipal boroughs (Clonmel, Drogheda, Kilkenny, Sligo and Wexford), twenty-six towns and forty-nine urban districts. Rural areas were those areas not situated in a county or other borough, an urban district or a town.

In addition, an applicant could be refused a licence on qualitative grounds. Section 13(1)(d) of the 1960 Act provided that a Court could refuse to issue a licence:

- on the ground of the character, misconduct or unfitness of the applicant, the unfitness or inconvenience of the new premises or the number of previously licensed premises in the neighbourhood, or
- on the ground that the existence of a licence for the new premises would be unreasonably detrimental to the business then carried on in some premises licensed for the sale by retail of intoxicating liquor in the neighbourhood.

2.1.2 Effects

First, entry to the market was only possible by replacing an existing operator. Requiring that, in some cases, two existing licences be extinguished so that a new one could be issued meant that the overall number of licences gradually fell.

Second, this licensing system created an ever-increasing monetary entry barrier. Because the number of licences was limited, existing licences acquired a scarcity value. Thus, new operators trying to enter the market had first to purchase and extinguish an existing licence. In cases where two extinguished licences were required the entry barrier was particularly high. As the total number of licences fell, the scarcity value of the existing licences increased, which *ceteris paribus* raised the height of the entry barrier ever further.

Third, the ‘one-mile rule’ prohibited entry into what would otherwise have been desirable locations. The one-mile rule only operated in favour of certain incumbents – those who were in existence prior to the coming into force of the 1960 Act and those who had not upgraded or expanded their premises since that date.

Fourth, the licensing system was inflexible in the sense that geographic delimitations were unable to keep pace with demographic changes. Thus, many areas that were clearly urban, such as Tallaght, Blanchardstown and Clondalkin, were classed as rural. The effect was that such areas were generally extremely poorly served. At the same time, a high number of licences remained in rural areas. In 1996, for instance, there were 13,000 people per pub in Blanchardstown while there were only 148 people per pub in Leitrim.

Finally, the provision allowing the Court to refuse to issue a licence on the basis that the business of existing operators may be adversely affected directly inhibited competition.

An innovative new entrant able to offer an improved product or service would have found such virtue penalised; the greater the value this entrant could offer consumers, the greater the threat it posed to existing suppliers.

2.2 Competition Authority Interim Drinks Study, 1998

On the 30th January 1997, the Authority initiated a formal Study of the retail drinks market.² The Study analysed the structural barriers affecting the retail drinks market. The terms of reference were:

“to undertake a study of the liquor licensing laws and other barriers to entry, and their impact on competition in the retail drinks market within the State.”

On the 23rd September 1998 the Authority published the *Interim Study on the Liquor Licensing Laws and other Barriers to Entry and their impact on Competition in the Retail Drinks Market* (the “Drinks Study”). The Study concluded that:

“The liquor licensing laws are a formidable barrier to entry into the retail drinks market. A legal description of this entry barrier reveals it as both quantitative and qualitative. With the limited exceptions noted, new licences may not be issued. Entry is practical in most cases only by purchasing an existing licence and such licenses are geographically constrained.” (Section 8.1)

The Drinks Study further stated that:

“Legal barriers to entry distort competition and the licensing laws are no exception. Entry is effectively blockaded for those who are unable to generate sufficient revenue to purchase a licence and entry is biased in favour of those able to sell alcohol most intensively. The geographic restrictions on entry can make it impossible for entrants to locate near incumbents ... All of the restrictions inherent in the system of licensing of pubs makes it impossible for the market to function efficiently and in the best interests of the consumer.” (Section 8.2)

On this basis, the Authority recommended the reconstitution of the licensing laws along the following lines:

- the repeal of the prohibition on the granting of new licences (as contained in Section 2 of the Licensing (Ireland) Act 1902);

² For a detailed account of previous reports on the retail drinks trade the reader is directed to Chapter 2 of the *Interim Study on the Liquor Licensing Laws and other Barriers to Entry and their impact on Competition in the Retail Drinks Market*.

- the repeal of any provisions protecting existing establishments from market entry (such as the “one-mile rule” as contained in Section 20 of the Intoxicating Liquor Act 1962);
- the repeal of any provisions granting existing establishments the right to object to market entry based on the effect of such entry on competitors (such as the number of previously licensed premises in the neighbourhood or the detriment to businesses then carried on in the neighbourhood); and
- the retention of only those legal barriers which relate to qualitative criteria directly relevant to the social dimension of the sale of alcohol such as: the suitability of the applicant; the suitability of the premises; and compliance with fire and safety and health regulations and with all applicable planning provisions.

The final paragraph of the Drinks Study is prescient:

“In terms of addressing the problems ... just tinkering with the current restricted entry regime would essentially be an attempt to improve upon a second best solution when a first best solution is available. A liberalised entry regime, which will spread gains throughout society, should be put in place, even in the face of resistance to our recommendations from a small, well-organised portion of society who benefit from the current system.” (Section 8.18)

Indeed, the sweeping reform called for in the Study has not yet materialised. In the interim the system has been loosened to a degree by the advent of the Intoxicating Liquor Act, 2000.

2.3 *Intoxicating Liquor Act, 2000*

2.3.1 *Relevant Provisions*

The Intoxicating Liquor Act, 2000 (the “2000 Act”), introduced a variety of provisions relating to permitted trading hours, measures to clamp down on underage drinking and new licensing arrangements regarding entry into the sector.

Of greatest interest is the change in the licensing arrangements, which are as follows. The 2000 Act provides:

- for the State as a single licensing unit (so that the urban/rural delimitation no longer applies);
- for the removal of the ‘one-mile rule’; and
- that only one licence need be extinguished so that a new one may be issued.

The grounds on which a Court may refuse to issue licence were also changed. Section 18(1)(c) states that an applicant may be refused a licence on the following grounds:

- 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.

2.3.2 *Effects*

First, the establishment of the State as single licensing area increases the geographic mobility of licences. Though the effect of this change on the distribution of licences throughout the State is unclear as yet, it is likely that there will be a migration of licences from over-licensed rural areas to under-licensed urban ones. Second, the removal of the ‘one-mile rule’ is also significant as it allows new entrants the possibility of locating in desirable areas where previously they could not. Third, the removal of the two-for-one rule halts the overall decline in the number of licences.

2.4 *Conclusion*

A number of the key features of the older restrictive licensing regime remain in place. First, it is still necessary for a new entrant to the market to replace an existing operator. Because of the scarcity value of licences, a significant monetary entry barrier therefore remains. Though the height of this entry barrier has fallen for urban areas, it has risen for rural ones. Second, since existing operators may invoke the right to object to the award of a new licence in their area on the grounds that there is already an adequate supply, incumbents still retain a degree of control over entry and consequently are afforded an effective shield from competition.

The Irish retail drinks market is still characterised by both entry restrictions and mobility restrictions. The effect of these restrictions is to distort the market in favour of existing alcohol retailers and to the detriment of consumers. In short, there remains much to reform in our liquor licensing laws if the full benefits of economic activity in the sector are to be realised and distributed in an equitable manner.

3 DESCRIPTION OF THE IRISH MARKET

3.1 Supply

A licence is required to sell alcohol in the State. As well as on and off-licences there are also wine, restaurant and hotel licences, to name but a few. At the end of 1998 traders held 13,505 on-licences and 698 off-licences to supply the market in conjunction with other types of licensees. Traders holding on-licences can also function as off-licences, i.e. can sell alcohol for consumption off premises. The distribution of licences between Dublin and the rest of the State, based on figures from Customs and Excise for the year ending 30/09/1998, is given below.

Table 1: Distribution of On and Off- licences³

	<i>On-Licences</i>	<i>%</i>	<i>Off-Licences</i>	<i>%</i>
<i>Dublin</i>	1,580	12%	220	32%
<i>Non-Dublin</i>	11,925	88%	478	68%

Dublin with 35% of the population (residents of Dublin) is served by only 12% of the total number of on-licences in the State. The corresponding number for off-licences is more reflective of underlying demographics. The table below depicts the distribution of licences per 10,000 of population and is based on the census of 1996.

Table 2: Licences per 10,000 people in the State⁴

	<i>On-Licence</i>	<i>Off-Licence</i>
<i>Dublin</i>	14.93	2.08
<i>Non-Dublin</i>	46.44	1.86

Again, it is evident that Dublin is relatively poorly served in terms of on-licences but that the distribution of off-licences is more reflective of underlying demographics. Many of the anomalous regional variations in the distribution of alcohol retail outlets have occurred because of the licensing regime that has been in place, in one form or another, since 1902.

³ Source: Revenue Commissioners in response to request from the Minister for Finance.

⁴ Sources: Revenue Commissioners in response to request from the Minister for Finance, Census of Population 1996.

Given that urban areas such as Dublin are under-licensed, as indicated by the relative values of urban and rural licences (before the 2000 Act the average rural licence value on the second-hand market was in the region of €75-90,000, but urban licence values ranged from €250-750,000⁵), there is likely to be a change in the distribution of licences illustrated in the tables above. Specifically, licences are likely to migrate toward urban centres such as Dublin.

The fact that licences, on or off, sell on the secondary market for positive amounts indicates excess demand. The values that these licences trade for are indicative of the “rent” (profits above those which could be earned in a normal competitive environment) associated with the quantitative restriction on licence numbers. Because the changes in the licensing legislation are so recent, the precise effect on the value of licences is difficult to determine. Sources in the auctioneering sector indicate that while some licence holders have been seeking amounts in the region of €65-170,000, true values, in the longer run are most likely in the region of €130-140,000.⁶ There may be a drop in licence values in Dublin and other urban areas, which if sustained, may provide evidence that the excess demand problem in urban areas has been (or will eventually be) somewhat relieved. The ability of urban areas to absorb new licences will, of course, be limited by such matters as planning regulations.

Finally, apart from the significant legal barrier to entry associated with the requirement that an existing licence must be extinguished before a new one may be issued, there is also a barrier to entry associated with the right of an existing licence holder to object to the issuing of a new licence in their neighbourhood. A court may accept such an objection if the publican can demonstrate the adequacy of the existing number of licensed premises in the neighbourhood.

⁵ Sources in the auctioneering trade have indicated these values. In their “Licensed Review 2000”, Morrissey’s report that since the 2000 Act two licences were transferred to the Grafton Street Downtown Area. It is also stated that prior to the new Act “a licence that would have qualified for transferral to the Grafton Street Downtown Area could have cost upwards of €90,000”.

⁶ If we were to aggregate the predicted value of individual licences over all licences in the State, both on and off (14,000 approx.), then we get an approximate total value in the region €1.8 – 1.96 billion. This value is indicative of the gains that would accrue to consumers if quantitative restrictions on entry to the liquor trade were removed. However, this value may be inaccurate for at least two reasons. First, the simple calculation carried out here implicitly assumes that liberalisation of entry would reduce the value of licences to zero. This, however, may not be the case. Apart from the quantitative restrictions on the number of operators allowed to enter the market, there are other barriers to entry. For example, a new entrant must comply with planning laws. This kind of entry barrier may have the effect of giving a licence a positive value. For this reason the above figures may tend to over-estimate the true potential gains from liberalisation. On the other hand, a second factor that would tend to mitigate this problem arises because of what is referred to as dead-weight loss. Dead-weight loss refers to that portion of the gains from trade that are lost by society, i.e. by both consumers and producers. Liberalisation of entry would re-capture this loss. Thus, if these factors tend to cancel each other out, the above figures represent a reasonable estimate of the potential gain available from the liberalisation of entry.

3.2 Demand

Alcohol by its nature is an intoxicating substance and consequently, a person's ability to carry out certain activities is impaired while under its influence. The consumption of alcohol as a social activity may be carried out in conjunction with other activities: for instance, alcohol may be consumed with food in a social setting, or as an accompaniment to a wide variety of other forms of entertainment. Alcohol is consumed in many forms including wines, beers, stouts, ales, lagers and a large variety of 'strong liquors' or spirits. Indeed, it may be misleading to think of a single 'demand for alcohol'. A rigorous treatment of the subject would probably involve an examination of various demands for classes of alcoholic beverages. For our present purposes we need only consider patterns of consumption at a more aggregated level.

Demand for alcohol in Ireland has some distinctive features when compared with our European neighbours. Consumption of alcohol in Ireland is overwhelmingly conducted in on-licence premises, to a degree not seen anywhere else (even in the UK). Furthermore, in looking at consumption patterns in on-licence premises a large proportion of sales is in the form of draught beer.

The National Health and Lifestyle Surveys, 1999, provided a breakdown of alcohol consumption patterns. The survey indicates that across all legal age groups 81% of males and 71% of females drink regularly. Within both gender groups, it is those in the 18-34 age bracket that consume alcohol most regularly with 90% of males and 85% of females having consumed alcohol in the previous month. The abstention rate from alcohol for males is 8% and 15% for females. Abstention from alcohol appears to be significantly higher for the over 55 age group with males abstaining at a rate of 20% and females at 36%. This is indicative of a trend away from historically high rates of abstention.

The survey also indicates that across all legal age groups and gender, 62% usually drink on one or two occasions in a typical week. However, 11% drink on five or more days in a typical week. Of those who consume alcohol regularly, males appear to consume more drinks per occasion with an average of 6.7 as opposed to a corresponding figure of 4.5 for females. Income bracket also appears to be significant in this respect. Those in lower income brackets tend to consume more drinks per occasion. This trend is much more pronounced for males.

In 1996 a World Drinks Trends survey ranked Ireland eleventh in Europe in terms of per capita consumption of alcohol. More recently, Ireland was ranked second after Luxembourg. Behind these figures lie a number of crucial factors. First, Irish demographics are such that the cohort of those who can legally consume alcohol has increased significantly over the last number of years. Second, the rate of abstention has been declining steadily over the last decade. Thirdly, as alcohol is a luxury item it is to be expected that we observe an increase in consumption during periods of high growth in disposable income. Finally, the impact of an increasing number of tourists must also be taken into account. While it is true that this tourism effect works in the other direction

also, i.e. Irish residents are increasingly going abroad, the net effect is likely to increase per capita consumption. This occurs for two reasons. First, there is a net inflow of tourists to this country. Recently, on an annual basis, the number of visitors to Ireland has tended to run at just under twice the number of Irish visitors abroad.⁷ Second, a proportion of the tourism to Ireland is associated with high levels of alcohol consumption (i.e. Ireland has become a popular destination for stag and hen nights).

In terms of prices, the Single Market Scoreboard No. 6 (22nd May 2000) indicates that when purchasing power parities are taken into account, Irish consumers pay the highest in Europe for alcohol, nearly three times the Spanish price. In absolute terms, the Nordic countries are still the most expensive countries to purchase alcohol in. However, when differences in the real purchasing power of incomes are factored in, Ireland has the highest prices.

Table 3: Pan-European Shopping – Alcoholic Beverages⁸

<i>Product category</i>	<i>Least expensive country</i>	<i>Most expensive country</i>	<i>Ratio of most to least expensive country</i>
<i>Alcoholic Beverages</i>	Spain	Ireland	299%

In Ireland up to 80% of all reported expenditure occurs in the on-licence sector and this is overwhelmingly comprised of sales of beer. Another notable feature of the demand for alcohol is that the pattern of consumption tends to be different in the off-licence trade with consumers consuming less beer and more spirits and wines than in the on-licence sector. Data from the Household Budget Survey 1994-95 show a clear pattern in terms of consumption in the on and off-licence sectors.

Table 4: Patterns of Consumption in On and Off Sectors⁹

	<i>Wine</i>	<i>Beer</i>	<i>Spirits</i>
<i>% purchased 'off'</i>	33.1	39.5	27.4
<i>% purchased 'on'</i>	2.7	87.5	9.8

3.3 Underage Drinking

There is a further dimension to the Irish drinks market, that of underage drinking. The National Health and Lifestyle Surveys, 1999, provided statistics on the phenomenon of

⁷ Source: www.cso.ie

⁸ Source - Eurostat, Purchasing Power Parities and related economic indicators: Preliminary results for 1998.

⁹ Source: Household Budget Survey 1994/1995.

underage drinking. By the age of 9-11, 50% of boys and girls have had a drink and by the age of 15-17, that number increases to approximately 85%. Overall, girls are more likely to remain abstainers than boys. Among girls, family income bracket appears to be an important factor with those in the higher income groups being less likely to take a drink. The report also provides statistics on 'current' drinkers where by 'current' they mean 'having taken a drink in the last month'. Overall, 29% of children fall into this bracket. The corresponding disaggregated figures are 34% for boys and 24% for girls.

The report also gives a sense of the seriousness of the problem. In the survey children were asked if they had ever been 'really drunk'. In total, 29% of the children report being really drunk. The corresponding disaggregated figures are 35% for boys and 24% for girls. The percentage of those reporting themselves to have been really drunk increases with age. Among boys the figure is 15% for ages 9-11, 28% for ages 12-14 and approximately 57% for ages 15-17. The corresponding figures for girls are 1% for ages 9-11, approximately 20% for ages 12-14 and approximately 48% for ages 15-17.

The National Health and Lifestyle Surveys, 1999, provide no statistics on how the pattern of underage drinking breaks down at a regional level. In particular, there is no evidence to suggest that the problems of underage drinking are more pronounced in rural areas where there is a greater supply of alcohol retail establishments.

The incidence of underage consumption of alcohol in Ireland is high by international standards, and any claims that the restriction on licence numbers helps to deter under-age drinking must be analysed in the light of their patent failure to do so up to now. The Authority welcomes moves, such as those in the 2000 Act that tackle this problem directly. The action of the Gardai is already bearing fruit in this regard.

4 LIQUOR LICENSING REFORM INTERNATIONALLY

4.1 *England and Wales*

The liquor licensing laws in England and Wales have recently been scrutinised in a British Government White Paper: “Time for Reform: Proposals for the Modernisation of our Licensing Laws” (Presented to the Parliament by the Secretary of State for the Home Department, April 2000). At present, the sale of alcohol at on-and off-licensed premises is subject to entry controls in the form of licensing of premises.

In relation to underage drinking, the White Paper points out that:

“...our approach is to balance greater freedom for the consumer to shop for alcohol when he or she wants with tighter controls on underage purchase and measures to ensure no increase in public nuisance.”

The Paper does not conclude that restrictions on the number of retail outlets are an appropriate weapon with which to fight underage drinking. The report proposes what it describes as “tough new measures” (which in fact are very similar to those already in operation in Irish law) to counteract the problem, including:

- prohibiting sales to people buying on behalf of those under 18 years for consumption in a public place;
- setting “test purchasing” (whereby the responsible authorities can use children to check whether the law is being observed) on a statutory footing;
- placing a positive duty on any person engaged in the retail of alcohol to be satisfied as to the age of the purchaser before making a sale; and
- creating an offence of permitting the sale of alcohol to those under 18, so as to make clear the responsibility of the licence holder when sales are made by his or her staff.

In order to guarantee standards in the industry, the White Paper proposes a system of licensing individuals allowed to sell alcohol, as well as the premises. A licence would be granted on the basis of the individual’s knowledge of the requirements of alcohol licensing law, relevant requirements of public entertainment and gambling law, alcohol misuse, drugs penetration, and crime reduction measures and partnerships. Possession of an accredited qualification should lead automatically to the grant of a personal licence in the absence of relevant criminal convictions; there would be no need for the licensing authority to try to form its own view of the applicants’ knowledge and character. Qualifications should be accredited by the Qualifications and Curriculum Authority and set out in a Statutory Instrument.

4.2 Scotland

Liquor licensing in Scotland is governed by an Act of 1976. According to the Justice Department of the Scottish Executive, each local council has a Licensing Board that has the power to grant new licences and to renew licences. Off-licence refusals run at 18% as compared to an average of all licences of 9%, which suggests that the Licensing Boards take their responsibilities seriously. Councils also decide on permitted trading hours. There is no separate licence for the individual as well as the premises, as is proposed for England and Wales. The market is, in fact, viewed as highly regulated. According to the Justice Department of the Scottish Executive, a committee has been set up to review the operation of the Act. Concerns expressed include the application of different standards and conditions by different licensing boards. To address this, the Convention of Scottish Local Authorities has proposed that a members' network of licensing board representatives be set up to explore and promote the opportunities for developing agreed proposals for law reform, standard conditions and by-laws and best practice.

In addition to the consultative process set up by the Justice Department of the Scottish Executive, the Health Department has also initiated a consultative process to assist in the development of a national Plan for Action to deal with alcohol misuse. This separate review of liquor licensing law is considered an integral part of the overall strategic approach to dealing with alcohol abuse.

Concerns expressed in Scotland about access to alcohol by minors seem to mirror those in England and Wales. According to Crime and Criminal Justice Research Finding No. 34, 1999, "An Evaluation of the Teenwise Alcohol Projects",

“ ... the bulk of alcohol consumed by underage drinkers appears to have been supplied by older teenagers who are often old enough to purchase it legally.”

In relation to the policing of underage drinking and 'working with licensees' this report highlights the role of 'proof of age cards'. It accepts that they are a useful measure for controlling alcohol abuse among minors but stressed that their usefulness was diminished by a lack of awareness among alcohol retailers. Less than half (44%) of the off-sales staff interviewed for the report said that they had undergone training on the subject of dealing with underage purchasers.

4.3 United States

An extensive and in depth report by the National Clearinghouse for Alcohol and Drug Information on *Preventing Problems Related to Alcohol Availability: Environmental Approaches*¹⁰ focuses on research and practice evidence for a select number of approaches to the prevention of alcohol availability-related problems. The report evaluated a number of prevention approaches. Of particular interest are the following:

¹⁰ DHHS Publication No. (SMA)99-3298.

- i. preventing availability to the underage;
- ii. raising alcohol taxes and prices; and
- iii. responsible beverage service.

The report ranked its recommendations based on the conclusiveness of the evidence supporting those recommendations. Four rankings were used:

- Strong Level of Evidence: policy makers can use the approach with the most assurance that the approach can produce the effect specified in the evidence statement.
- Medium Level of Evidence: policy makers should exercise discretion in application and in assessment of process and outcomes.
- Suggestive but Insufficient Evidence: policy makers should be cautious about using this approach.
- Substantial Evidence of Ineffectiveness: policy makers are advised not to use the approach at this time.

4.3.1 Availability to the Underage

On the issue of preventing availability of alcohol to minors the report concluded that it is possible to implement and enforce laws designed to prevent alcohol availability and that there was medium evidence supporting the notion that the level of enforcement affects the rates of underage purchasing. The report found there to be strong evidence that increasing the minimum drinking age results in a decrease in traffic casualties.

4.3.2 Alcohol Taxes

In relation to the use of taxes the report found that States and jurisdictions that have higher taxes tend to have lower rates of consumption, fewer deaths due to motor vehicle crashes and less violent crime. Because alcohol is a discretionary purchase, especially for social drinkers, demand for it is affected by price fluctuations. An increase in the price as well as in the taxes levied on alcohol should therefore effectively depress its consumption.

The report also points out that most of the adverse consequences of drinking result from the amount of alcohol in each drink, whether the alcohol is concentrated or diluted. Thus, it may be appropriate to impose a higher tax level per unit of alcohol on beverages such as spirits, which are more concentrated and thus cheaper to manufacture and distribute than beer and wine.

The importance of the inflation indexing of taxes is also recognised in the report. The benefits of increases in alcohol taxes, such as reductions in alcohol-related health and social problems, are likely to diminish as inflation erodes the real value of the tax increase. To avoid this erosion, the tax can be indexed so that the nominal tax rate rises in step with prices. Indexing alcohol taxes to consumer prices should make the public health gains of higher taxes permanent.

4.3.3 Responsible Beverage Service

The report considers the issue of ‘responsible beverage service’ to be of extreme importance. Responsible beverage service, or RBS, includes server and management training and management policies that are designed to reduce the risks of customer intoxication and that intoxicated persons will harm themselves or others. The goal of RBS is to create safer drinking environments and to reduce the likelihood of intoxication and its related problems. In North America research showed that the behaviour of alcohol servers and the policies of drinking establishments can have an impact on the behaviour of their patrons.

In relation to responsible beverage service the report recommends the following.

- *Enforce the law.* Laws should be enforced uniformly and strictly.
- *Trouble spots should be targeted.* There are several ways to identify trouble spots; in particular, greater attention can be paid to adherence to the laws at establishments linked to substantial incidence of drunk driving arrests. Such high-risk establishments can be singled out by identifying the locations where arrested drunk drivers purchased their last drinks. Further, States and other jurisdictions are often reluctant to revoke or suspend alcohol licences, waiting until numerous complaints and severe problems are reported before acting. It is recommended that States and jurisdictions intervene in problem establishments early rather than waiting until problems associated with a drinking establishment get even worse.
- *Owner Liability.* Since the 1970's, most States in the US have increasingly recognised some form of liability on the part of drinking establishments, whether by legislation, court decisions, or both. Experience suggests that the strongest incentive to stop service to intoxicated or underage individuals appears to be the threat of business loss due to revocation of an establishment's alcohol licence. It was recommended that States and jurisdictions undertake efforts to keep the burden of legal responsibility on the owners of drinking establishments.
- *Provide Incentives.* Experience suggests that drinking establishments generally will not participate in RBS activities unless they have significant incentives to do so. Keeping a licence to sell alcohol in order to remain open and avoiding licence revocation are the greatest incentives for drinking establishments to participate in RBS training. Further, drinking establishments have vested interests in safety and

the prevention of injuries for which they are legally liable. As a result, they are naturally concerned with the liabilities associated with serving intoxicated patrons and serving patrons to the point of intoxication. The report recommended that prevention activities involving outlet owners and managers play on these inherent concerns.

The report does not conclude that blanket restrictions on the number of retail outlets may be useful as a means of controlling alcohol related problems. It does indicate however that the density of retail outlets may be a factor contributing to the problem associated with alcohol consumption and that it may therefore be appropriate to consider this when reforming the law in this area.

4.4 Conclusions

A number of commonalities emerge from the international experience of liquor licensing reform:

- blanket restrictions on the number of retailing outlets does not seem to be a useful or proportionate means of addressing the social ills associated with the excessive consumption of alcohol;
- there seems to be a general acceptance that placing a positive duty on the vendor for ensuring that the underage may not purchase alcohol is an effective means guarding against this problem so long as the laws are enforced; and
- the training of both owners and servers in aspects of responsible alcohol retail is also seen as an effective means of limiting the social ills arising from the consumption of alcohol.

5 THE REGULATION OF ENTRY

5.1 Quantitative Restrictions

5.1.1 Description

Section 2 of the Licensing (Ireland) Act, 1902, imposed a quantitative limit on the number of licences to retail alcohol. Since the Intoxicating Liquor Act, 2000, entry to the market is only possible by first purchasing and then extinguishing an existing licence.

5.1.2 Economic Rationale for Quantitative Entry Restrictions

First, imperfect competition¹¹ may result in a level of entry above that which would be socially optimal. Second, the opposite result, i.e. a tendency toward insufficient entry may occur when individuals value product diversity (for a discussion of these results the reader is directed to the Technical Economics Text Box below). A third reason is that restrictions on entry may be used to correct for market failures other than excess or insufficient entry. The traditional argument here might be that raising return at the margin might alter behaviour in a socially beneficial direction. For instance, with products where some dimension of quality is crucial, for safety reasons for example: by raising the return at the margin, the incentive to cut costs and skimp and on the important aspect of quality is reduced. With pub licensing there is an additional dimension to this argument. It is often argued that the present licensing system encourages the socially responsible sale of alcohol. An irresponsible publican runs the risk of having his licence revoked and thereby incurring a significant capital loss because of the associated value of the licence on the secondary market. Thus, the higher is the value of the licence the greater the incentive to behave in a socially responsible fashion.

There are a number of problems with the use of the excess entry (or the insufficient entry) result as a justification for regulating entry. First, whether the tendency toward excessive or insufficient entry dominates depends on the specifics of supply and demand. In most circumstances it would be doubtful whether a regulator could have enough information to determine which effect dominates. Even where the tendency is purely toward excessive entry, it is again likely that the regulator would lack sufficient information to determine accurately the precise level of entry that would be socially optimal. Indeed, only in circumstances where the negative welfare effect of free entry is particularly severe, might the restriction of entry be justified. Such circumstances may arise where there is a particularly large fixed cost of entry. The alcohol retail market is not such a market: the fixed costs of entry in this market, apart from the licence fee, are comparable to the associated fixed costs of other retail sectors where no restrictive entry regime exists.

¹¹ An imperfectly competitive market is one in which firms retain a degree of market power.

Technical Economics Text Box: *The Excess and Insufficient Entry Results*

In homogeneous product markets with a free entry regime, monopolistic competition will result in a level of entry above that which would be socially optimal. This result, originally due to Chamberlain (1933)^a and referred to as the ‘excess entry’ result, arises because a marginal entrant’s evaluation of the desirability of entry is greater than society’s. The marginal entrant’s evaluation is equal to potential profit, but society’s evaluation is equal to the potential profit of the marginal firm minus the reduction in social surplus that occurs because of the contraction in output of intra-marginal firms. So, provided there is a business stealing effect, i.e. provided the entry of new firms induces a contraction in output by incumbents, the marginal entrant values its entry more than society does and consequently there is a tendency toward excessive entry. The welfare loss associated with excess entry is related to the size of firms’ fixed set-up costs. Mankiw and Whinston (1986)^b demonstrate that as the magnitude of the fixed set-up cost tends toward zero, so does the loss in social welfare due to excessive entry.

The opposite result, i.e. a tendency toward insufficient entry may occur when product markets are differentiated. Spence (1976a)^c and Dixit and Stiglitz (1977)^d show that if individuals value product diversity, a tendency toward insufficient entry may arise because the marginal entrant values its entry less than society does. This occurs because the marginal entrant creates a social surplus that it cannot entirely capture as profit. Whether the tendency toward excessive or insufficient entry dominates depends crucially on the precise supply and demand conditions. Mankiw and Whinston (1986) demonstrate that the welfare loss associated with the net-entry effect goes to zero as the fixed set-up cost goes to zero.

^a Chamberlain, E. (1933), *The Theory of Monopolistic Competition*, Harvard University Press, Cambridge, Mass.

^b Mankiw, N.G. & Whinston, M.D. (1986), ‘Free entry and social inefficiency’, *Rand Journal of Economics* **17**, 48-58.

^c Spence, M. (1976a), ‘Product selection, fixed costs and monopolistic competition’, *Review of Economic Studies* **43**, 217-236.

^d Dixit, A. & Stiglitz, J. (1977), ‘Monopolistic competition and optimal product diversity’, *American Economic Review* **67**, 297-308.

Second, the regulation of entry generates its own inefficiencies. By restricting entry, incumbents are protected from competition. Specifically, by removing the threat of new entry to a market, firms already in the market have little incentive to operate efficiently. In a free entry regime, the threat of entry provides firms an incentive to keep costs down. If they do not, then new, more efficient firms will enter the market and squeeze the less efficient ones out. Thus, any perceived welfare improvement of restricting entry on the grounds that free entry would result in an above optimal level of entry must be balanced against the efficiency loss that the regulation of entry would itself generate. Again, unless the welfare loss associated with free entry is particularly severe, the regulation of entry may not be justified.

There are also a number of problems with the third rationale for quantitative entry regulation, that is, that the restriction of entry might alter firm behaviour in a socially beneficial direction. First, the use of entry restrictions for this purpose must be considered in the light of other available alternatives. In general, the restriction of entry as a mechanism for correcting for other market failures is a blunt instrument at best. There are more effective means of incentivising firms, bonding for example.

Second, the deterrent effect of potentially having one's licence revoked must be discounted against the probability that it will be used. In reality, licences are rarely revoked so that the deterrent effect is likely to be minimal.

5.1.3 The Distortionary Effects of Entry Restrictions

The restriction of entry to the Irish retail drinks sector has distorted the market. First, the current restrictive entry regime has inhibited efficient exit from the industry. This is evident in rural areas where, it is reported, many establishments are not commercially viable. For instance, according to a report commissioned in 1999 by the Drinks Industry Group, over 42% of non-Dublin pubs have a turnover of less than €63,500 as compared with none in Dublin.¹² It is likely that many such operators remain in business simply to maintain their licence so that they may be able to sell it on the secondary market (or use it as security for loans).

Second, there is a tendency for new entrants to the market to set up large, so called 'super-pubs'. The reason is that it may simply not be viable to open smaller establishments. To cover the large sum that must be paid to acquire an existing licence, new entrants must maximise its use, thus creating a tendency to open larger venues. Another related effect concerns the exclusive sale of alcohol and not, as is normal in other countries, the sale of alcohol in conjunction with other social activities. Given the large expense associated with purchasing a licence, it is in the publican's interest to maximise its use, sell as much alcohol as possible and not invest in the provision other forms of entertainment since to do so would detract from the chief activity: the consumption of alcohol.

¹² Source: *The Drinks Industry in Ireland – A Substantial National Economic Asset*, Anthony Foley, 1999.

Third, the current licensing regime has operated to the detriment of the traditional ‘Irish pub’. As already mentioned, the current licensing regime has resulted in a tendency to open very large pubs. Because an existing licence must be extinguished so that a new pub may be opened, for every large new pub that is opened, a smaller one must close.

5.2 Qualitative Restrictions

5.2.1 Description

Section 18 of the Intoxicating Liquor Act, 2000, provides for a degree of qualitative entry regulation. In particular, Section 18(1)(c) states that an applicant may be refused a licence on the following grounds:

- 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.

5.2.2 Economic Analysis

Prior to the 2000 Act, a Court could refuse to issue a licence on the grounds that the profitability of existing pubs might be adversely affected so that a new entrant had to persuade the Court that this would not be so. While this provision was removed by the 2000 Act, ground (iv) above may operate in much the same way. In principle, an existing publican could object to the issuance of a new licence on adequacy grounds by reference to their own profitability, i.e. the number of establishments must be adequate since another one might make them unviable.

Further, grounds (ii) and (iii) give ample scope in terms of refusing an additional licence in any area. These grounds could relate to extra traffic, the current level of nuisance associated with the sale of alcohol in the area, etc. The concern is that the new entrant should not be disadvantaged due to any nuisance that may be associated with incumbents. Such a policy fails to ensure that the whole penalty from not complying fully with the licensing laws should reside with the individual licence holder.

5.3 Conclusion

Lawful restriction of entry may be socially desirable in certain circumstances. The efficacy of such a policy must be considered in the light of stated objectives, the distortionary effects of that policy and other available alternatives. The current

quantitative and some qualitative entry restrictions (notably point (iv) above) in the Irish retail drinks sector are highly distortionary. Moreover, it is unclear that they are at all effective in addressing public policy concerns in relation to the consumption of alcohol. Section 6 examines those public policy concerns and the means available to address them in the most effective and proportionate manner.

6 TOWARD A PUBLIC POLICY FRAMEWORK

Certain aspects of alcohol consumption have detrimental effects on society. Most societies therefore put laws in place aiming to limit consumption and to protect certain elements of society (such as minors) from access to alcohol. This section examines the effectiveness of the current safeguards and the means available to the State to control such consumption in a targeted, effective and proportionate manner.

6.1 *Social Problems Associated with Alcohol*

There are many social and health problems associated with alcohol abuse. These problems include: underage drinking; alcohol addiction; binge drinking; drunk driving; and the public disruption that collective consumption, in particular, can lead to. Associated with these are a wide set of other problems. The diminished sense of consequence and responsibility that excessive consumption of alcohol can induce can lead to individuals behaving in a personally and socially irresponsible manner. For instance, individuals are more likely to engage in unsafe sexual practices, or to behave in a rowdy or violent manner. The costs that these problems impose on society in terms of the injurious effects on families and family life, the burden on our health services, loss of life and damage to property are significant and often untold.

6.2 *Available Policy Instruments*

A wide range of policy instruments is used in various countries to counteract the social and economic costs of alcohol abuse. Instruments can be characterised as supply or demand related. Further, such instruments may be global in nature or targeted at particular groups or patterns of consumption.

6.2.1 *Possible Supply Related Instruments*

First, the *number* of retail outlets may be limited. This kind of policy is global in nature as it affects everybody and is not targeted at any particular group. In a market where there is simply a limit on the number of retail establishments, supply responds to increased demand through the expansion of existing premises. This has the effect of increasing the public nuisance value of collective alcohol consumption. Further, it is unlikely to deter problem groups such as the addicted and heavy drinkers and is likely to exacerbate the problem of underage drinking since retailers would find it difficult to monitor their clients.

Second, the *size* of retail establishments could be regulated. This kind of regulation would help ease the nuisance problem of collective consumption and would also enable

retailers to better monitor their clientele. However, it is unlikely to deter the heavier drinking groups.

Third, changing the *hours* at which retail outlets may open and close may be used to ease the problem of public disruption. For instance, if closing times are staggered, there will not be an outpouring of individuals onto the streets at the same time. Again however, the heavier drinking groups are unlikely to be deterred, as they will simply move from premises to premises.

Fourth, legal restrictions on *who can purchase alcohol* can be enforced more vigorously. This kind of instrument may be targeted at the underage and the already intoxicated. As the discussion in Section 4 indicates, this approach can be effective. Further, as the American research in particular indicates, placing greater liability on the vendor can be a useful tool in counteracting certain patterns of problem behaviour. By making the vendor responsible for selling to the underage or the already intoxicated, it becomes in the vendors interest to ensure that this does not happen. However, for this approach to work, the law must be enforced vigorously.

Finally, law could require *training for both vendors and owners* of retail establishments in ‘responsible beverage service’. Indeed, a system of licensing individuals as well as establishments might be appropriate. This kind regulation is global in the sense that it would apply to all alcohol vendors, but it could also be targeted to deal with problem groups such as binge and underage drinkers. Were such an instrument to be implemented, the relevant authority would need to be mindful of the potential for capture of the accrediting body by special interests.

6.2.2 Possible Demand Related Instruments

While targeted supply-side instruments can be useful in counteracting problem consumption patterns, their effectiveness is limited. If the demand-side sources of alcohol problems remain, supply-side restrictions will often be circumvented: if a want exists, the means will be found to satisfy it. Thus, demand-side policies that tackle the source of the problem directly are likely to be more effective.

First, *raising the price of alcohol through taxation*, as was borne out by the American Study examined in Section 4, has the effect of reducing consumption. In relation to tobacco it has been recognised that young smokers are price sensitive and taxes have been raised accordingly. In addition, efforts have been made to ensure that cigarettes cannot be sold in small quantities. This step was taken when it was realised that it was overwhelmingly minors who exhibit this kind of consumption pattern. Taxation lowers demand and allows the Government to receive a higher proportion of the rents. This revenue can be used to fund programmes to curb harmful demand patterns.

Second, *cultural attitudes* might be changed. While changing cultural attitudes toward alcohol is a difficult process, a first step might be to highlight existing cultural

ambiguities. In this respect, a global educational policy might be usefully employed. For example, attitudes toward drunk driving have been changed by the use of television advertisement campaigns. A similar approach may be used to change attitudes toward underage drinking or binge drinking.

Third, *targeted education programmes* can be used to inform groups such as the underage about the health and safety risks associated with alcohol consumption.

6.3 Choice of Efficient Instrument

In choosing an appropriate instrument or set of instruments to address the social problems associated with the consumption of alcohol, policy makers should be guided by the principle of proportionality. That is, only those instruments that achieve their objective in the most efficient and non-distortionary fashion should be implemented. Where more effective and less distortionary alternatives are available, these should be implemented.

Further, global and targeted instruments need to be distinguished. Global instruments are those instruments that affect everybody, while targeted instruments are those aimed at particular groups of consumers or types of behaviour. Thus, entry restrictions and taxation are examples of global instruments while measures aimed at reinforcing the law in relation to underage drinking or educational policies are targeted instruments.

6.4 Effects of the Current System

The instruments currently employed to tackle the social problems associated with the consumption of alcohol may be characterised as policies to restrict supply in general (entry regulation and restricted opening hours), policies to inhibit demand (taxation) and policies to restrict supply to the underage (underage drinking policies).

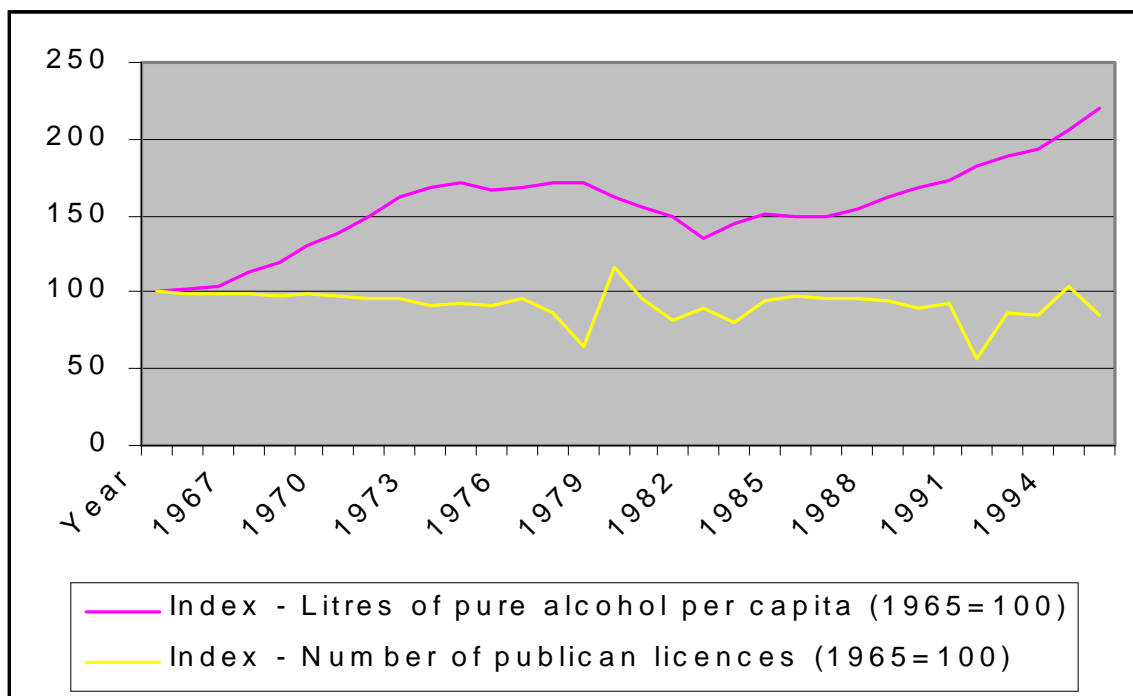
6.4.1 Entry Regulation and Restricted Opening Hours

First, the current system attempts to curb alcohol consumption by limiting the availability of licences. This is achieved by requiring one licence to be extinguished for every new licence granted. However, this system has patently failed to tackle the problems associated with alcohol consumption. Instead, it has created a very cohesive vested interest in the vintners, who resist reform to maintain the large stream of profits that their monopoly position affords them (as well as to protect the asset value of their licences).

Figure 1 below illustrates the failure of the philosophy of limiting the number of outlets. Since the 1960s per capita consumption of alcohol in Ireland (in terms of litres of pure alcohol) has more than doubled. At the same time the number of publican's licences has

remained practically static (data from the Revenue Commissioners).¹³ It is clear that the current system cannot be defended on the grounds that it minimises alcohol consumption.

Figure 1: Trend in Publican Licences and Per Capita Consumption of Alcohol (1965-1996)¹⁴



From Figure 1 it is clear that the current system fails to meet the objectives underpinning reform in liquor licensing over the last century. While the number of licences has declined slightly, consumption of alcohol per capita has more than doubled.

Second, the system has also failed to prevent or curb teenage drinking or binge drinking. On the contrary, the evidence points to the current system encouraging and facilitating a "drinking culture". Unlike other countries, in Ireland most drinking is done in premises exclusively dedicated to drinking. The high cost of obtaining a licence means that it is likely to be uneconomical for other types of venue to serve alcohol – the system encourages a high throughput of alcohol in order to recover the expenditure on the licence.

Third, within this framework, consumers are not well served. Choice is restricted, particularly in urban areas as the pressure for "throughput" is met by increasing the size of premises, creating the so-called "super-pubs" at the expense of smaller "local" facilities. An Taisce highlighted the loss of "traditional" -style pubs in their submission.

¹³ The variation in the trend in licence numbers is largely due to failure to renew licences on time.

¹⁴ Source: World Drinks Trends, 2000. Revenue Commissioners

It could be argued that, as a result, the system disproportionately penalises moderate and social drinkers by restricting their choice of outlets.

Further, that this kind of regulation is not proportionate has an explicit basis in EC case law. In *Frenzen*,¹⁵ the ECJ (European Court of Justice) accepted that “... the protection of human health against the harmful effects of alcohol ... is indisputably one of the grounds which may justify derogation from Article 30 of the Treaty.” Nevertheless, the ECJ found that the licensing system set up by the Swedish Law on Alcohol was not “... proportionate to the public health aim pursued or that this aim could not have been attained by measures less restrictive of intra-Community trade.”¹⁶ While the licensing system examined by the ECJ in the *Frenzen* case concerned licences for the production and wholesale of alcohol, the arguments relied on by the ECJ in impugning those rules are equally applicable to licensing systems for retail of alcohol. The Court found that overly restrictive measures on the sale of alcohol could not be justified merely because they formed part of an alcohol policy aimed at minimising the injurious effects to health of consumption of alcoholic beverages, since, in the Court’s view that objective could be achieved by measures which were less restrictive of fundamental EC Treaty obligations (the free movement provisions, as well as EC competition rules). The Court seemed to accept that alternative means for achieving national policies on alcohol should be increasingly used in efforts to bring about new drinking habits in the Member States.

Arguments for the liberalisation of entry into the pub trade are frequently met by “scare mongering” responses claiming that “we don’t need any more pubs”, “there would be a proliferation of pubs”, “we would be making our alcohol problems worse”. This ignores a number of facts, notably that the current system has artificially created a shortage of pubs in urban areas and an excess in rural areas. In other words, if “proliferation” is a problem, it is one that is encouraged by the current system, which ensures that inefficient outlets remain in the industry (due to the secondary market in licences). “Liberalisation” in the sense used by the Authority – allowing an individual to apply for a pub licence on his or her merits – is unlikely to lead to a sudden and dramatic increase in the number of pubs, since the applicant will have to comply with all other licensing requirements and with onerous planning restrictions. What is likely to happen is that gradually, over time, supply (pubs) will shift to where the demand (the population) is.

Finally, at present, closing times are not staggered so that at certain times of night there is an outpouring of people onto the streets. This may exacerbate the problems associated with collective consumption.

6.4.2 Taxation

Taxation of alcohol is currently used in Ireland, both as a means of generating exchequer revenue and also as a means of deterring consumption. The effect that taxation has on

¹⁵ *Criminal Proceedings v Harry Frenzen*, Case C-189/95) [1997] ECR I 5954.

¹⁶ *Ibid*, at para. 76.

different groups depends on the group's elasticity of demand, i.e. how responsive is the group's demand to a change in price. Taxation may be effective at deterring underage drinking, but not the heavier drinking groups. It can also be used to reduce overall consumption, thus reducing the likelihood of individuals becoming problem drinkers.

It is frequently argued by the trade that taxation levels on alcohol in Ireland are excessive¹⁷. However, whilst figures from Eurostat (outlined above in Section 3) show that Irish consumers pay the highest price for alcohol in the EU, figures from the publication *World Drink Trends, 2000* show that Irish excise taxes and VAT rates on alcohol are comparable to other developed nations.

6.4.3 Underage Drinking Policies

It is illegal to sell alcohol to minors. Section 13 of the 2000 Act has provided for the temporary closure of an establishment found to be guilty of this offence. This legal restriction is a targeted policy instrument aimed at preventing availability to the underage. Previous to the 2000 Act, the only punitive measure available to the Courts was to revoke the licence to sell alcohol. The efficacy of this deterrent has to be considered in the context of how likely the Courts were to revoke a licence. In practice, the revocation of a licence was not a credible threat, and accordingly its deterrent effect was limited. The figures given in Section 3.3 show that minors, including some very young children, appear to have little difficulty in getting access to alcohol. The reforms in the 2000 Act explicitly faced up to these realities and took steps to deal with them accordingly. The threat of temporary closure is credible and it should operate as an effective deterrent to the sale of alcohol to the underage. However, its precise effect is difficult to determine at present as the passing of the 2000 Act is so recent.

6.5 Conclusion

In addressing the social ills associated with the consumption of alcohol, public policy should be guided by the principle of proportionality. The current approach is largely ineffective in addressing the social ills, highly restrictive of competition and, crucially, not proportionate. The Authority recommends reform of the liquor licensing law that reflects a shift away from disproportionate supply-side policies, such as those that are currently in place, toward demand-related ones. Moreover, where possible, policies should be targeted at specific groups and patterns of behaviour.

¹⁷ See, for example, the Drinks Industry Group's entry in the IPA's *Administration Yearbook and Diary 2001*: "Objective is to persuade government to reduce alcohol taxation to realistic levels."

7 CONCLUDING RECOMMENDATIONS

The current system of liquor licensing is restrictive of competition. New entrants to the market are unnecessarily burdened with having to purchase an existing licence. Further, the mobility of licences is restricted. A new pub may not locate in an area where there is already an ‘adequate’ supply of pubs.

The effect of the liquor licensing regime has been to distort the retail drinks market. At present, supply responds to growing demand by the expansion of existing premises and the licences increase in value, not because of capital investment, but because of their protected profit stream. These characteristics are all evident in the Irish pub market, which is distorted in several ways.

First, anomalous regional variations in the distribution of pubs abound. For instance, approximately 35 per cent of the population (residents of Dublin) is supplied by just 12 per cent of the pubs. Second, while Ireland has exported the Irish pub concept to the rest of the world, the licensing system here has destroyed many traditional pubs in Dublin. Meanwhile, Ireland is largely deprived of innovations like French-style cafés, which sell a broad range of products. Ultimately, this restrictive system has imposed a huge cost on consumers in terms of high prices, poor quality, lack of choice and little innovation.

It is often argued that the current restrictive licensing regime operates in favour of social and health considerations. There is little evidence that this is true. Since 1965 the number of licences has remained relatively static while per capita consumption of alcohol has more than doubled. Moreover, there exist more proportionate and effective means of addressing these problems. The Authority recommends a move away from global supply-side policies such as entry restrictions toward more effective ones.

Accordingly, the Authority recommends that:

- quantitative entry restrictions should be removed, i.e. the prohibition on the granting of new licences (as contained in Section 2 of the Licensing (Ireland) Act 1902) should be removed.
- the mobility of licences should be enhanced by the removal of the right to object to the issuance of a new licence on adequacy of supply grounds.

Policies that address the demand for alcohol directly are more likely to reduce consumption than are policies that restrict supply. In this respect the Authority recommends that:

- the Commission consider reform of alcohol taxation policies. To the extent that the trend of increasing average alcohol consumption is a social problem, and that

problem groups are sensitive to price changes, raising the price of alcohol through taxation may be appropriate.

- the Commission consider setting aside a portion of alcohol taxation revenue to deal with the problems associated with the consumption of alcohol. Such a policy should be designed so that revenue increases with growth in the consumption of alcohol. This revenue might be usefully employed as funding for the implementation of educational and opinion-forming policies and also as a means of financing more vigorous enforcement of the law. This kind of targeted policy could be aimed at highlighting ambiguous attitudes that society has in relation to certain patterns of alcohol consumption such as underage drinking, binge drinking and public drunkenness.
- the Commission might consider the usefulness of targeted taxation schemes. For instance, it might be appropriate to vary taxation rates by time of day, for example, higher rates later at night might be appropriate.
- the Commission examine other policies to reduce demand, particularly where it is linked to other social problems, in targeted ways.

Though targeted demand-side policies are more likely to be more effective, supply-side policy instruments, once targeted and properly implemented, can be effective in addressing the social problems associated with the consumption of alcohol. In this respect the Authority recommends that:

- the Commission consider the licensing of individuals to sell alcohol as well as premises. Such licences might be granted to any individual having obtained an accredited qualification. Further, in order to obtain that qualification, individuals should receive training in relation to under age drinking and responsible beverage service in general.
- the Commission consider placing greater legal liability on vendors for the sale of alcohol to minors and the already intoxicated.
- the Commission examine international experience in the use of targeted policies to address social problems at the point of sale.
- that measures be taken to strengthen the enforcement of existing laws. It may be appropriate that alcohol taxation revenue be used for this purpose.

Finally, further research is required into the means available to policy makers to address the social problems associated with the consumption of alcohol. In particular, it may be appropriate to undertake a study, along the lines of that undertaken in the US and discussed in Section 4. Such a study should be guided by the principle of proportionality:

only those policies that are least distortionary, least restrictive to competition and most effective in achieving an explicitly stated objective should be implemented.