



'DRINKING RESPONSIBLY'
A response from
The Association of Licensed Multiple Retailers

February 2005

The Association of Licensed Multiple Retailers (*ALMR*) welcomes the opportunity to comment on the Government's proposals to promote responsible drinking, set out in a consultation paper published jointly by DCMS, Home Office and ODPM in January 2005.

By way of background, the *ALMR* is the only national trade body dedicated to representing the interests of licensed retailers – principally pub, bar, club and restaurant operators. Currently, just under 100 companies are in membership, between them operating over 30,000 outlets – around half the UK pub and bar estate. Members include major pub companies such as Punch and Enterprise – whose pubs are operated as individual small businesses – national chains of managed operators such as Yates's, Regent Inns and Laurel and the retail estate of regional brewers. However, the bulk of our membership is derived from small independent companies operating 50 outlets or less under their own branding. These outlets are predominantly community or high street offerings and stand to be most affected by the changes set out in the consultation document.

The hospitality sector is a £20 billion a year industry, equivalent to 5% of GDP. It already generates substantial public sector revenue - alcohol duty alone raises £13 billion, with business taxes, rates, gaming duty, VAT and PAYE on top of this, not to mention additional voluntary contributions to local initiatives and BIDs. These businesses already contribute significantly to the police and to local authorities and they have a legitimate expectation of a level of service and enforcement as a result. This must be borne in mind when the costs of alcohol misuse are debated.

As a general observation, we are extremely concerned about the way in which the consultation on such an important and commercially sensitive matter has been handled. The consultation document was published on 21st January and comments are invited by 28th February – a consultation period of little over five weeks. This falls well short of Government best practice standards.

We also believe that the title of the consultation document is somewhat misleading. This focus of the document is the establishment of Alcohol Disorder Zones and actions against irresponsible retailers. There is very little of the document devoted to measures to encourage individual responsibility and responsible drinking. We believe that this is an equally important aspect and one where the Government has a leadership role to play.

The main focus of our comments relates to the proposal to grant local authorities and police the power to establish Alcohol Disorder Zones. Our principal concerns are set out in the introductory section below. We have subsequently provided a detailed commentary on all aspects of the consultation paper, responding to issues and specific questions in the order in which they are raised by the paper itself.



Overview

We acknowledge that there are clearly issues of concern relating to public drunkenness in many towns and cities across the country and that we all have a collective responsibility for tackling these. Our members' commercial interests are significantly affected not only by the proposals set out in the paper, but also by high levels of alcohol-related disorder and anti-social behaviour. Licensed retailers therefore have a strong vested interest in ensuring that any initiative in this area is effective and will work in practice.

We support the polluter pays principle in such circumstances but remain fundamentally opposed to the imposition of compulsory levies on the sector as a whole. As an industry we favour higher and more rigid penalties for alcohol-related offences – whether committed by licensees or by consumers – and a zero tolerance approach to irresponsible conduct.

We believe that the proposals set out in the consultation paper fail these important tests and therefore have grave reservations about their ability to tackle the root causes of the problems identified.

In particular we believe that the proposals for ADZs as currently drafted are ill-thought through, lacking clear focus and direction. The absence of any meaningful detail in the document as to how such schemes will be established, operate and be terminated makes it difficult to assess precisely, but the scheme will undoubtedly have severe commercial implications for responsible small and independent operators in particular and may potentially discourage inward investment in standards by some retail operators.

More worryingly, we are concerned that the proposals are likely to have minimal impact on the real problem of public drunkenness and disorder on the streets of our towns and cities. This is largely because the proposed policy approach is a blanket one, applying equally to all licensed premises within a particular area regardless of how well they are run and how responsible the operator is within the community. The overwhelming majority of pubs and bars are well run and law abiding, with responsible customers. These proposals would penalise all outlets in a given area for the actions of the minority.

The fact that the costs are not targeted on those causing the problem means that they are unlikely to have any real deterrent effect or encourage change in operational practice by those whose current behaviour has caused the problem. If anything, the indiscriminate nature of the levy will mean that responsible businesses are penalised for and subsidise the actions of the irresponsible minority, who will remain free to trade throughout the process. It is this irresponsible minority who are least likely to be currently participating in standards schemes, local funding initiatives and other voluntary trade activity. They are also the least likely to actively engage in any action plan to rectify the problem.

We believe that a more effective approach to the identified problem would be strong and targeted enforcement against the small minority of irresponsible operators. Enforcement activity, action plans and funding solutions should be focused on these operators, not the trade as a whole. Irresponsible operators should be named and shamed – isolated, penalised and if necessary closed down. The police and local authorities already have extensive existing powers to clamp down hard on rogue operators and we firmly support a zero tolerance approach to licensing and public order offences.

These powers will be supplemented by the introduction of the Licensing Act 2003 later this year, it is therefore premature to impose further measures at this time until the impact of



these new powers and regulatory framework can be assessed. It is also worth noting in this context that the very businesses most likely to be affected by the ADZ proposals will already be paying substantially higher licensing fees to cover inspection and enforcement costs.

Context

The *ALMR* shares the Government's concerns about the level of alcohol-related crime and disorder, and the industry as a whole endorsed the recent summer and Christmas alcohol enforcement campaigns. We are extremely disappointed that the consultation document is so dismissive of the results and effect of such campaigns within the trade. A low level of non-compliance on matters such as under-age sales and the serving of drunks was achieved through a rigorous enforcement campaign. We believe that a sustained approach of this nature would send an effective deterrent message to operators, resulting in real changes to operational practice throughout the industry.

We acknowledge that the problem of alcohol-fuelled violence cannot be addressed solely by individual police officers dealing with individual drinkers, but this is an important component of an overall effort to change the culture of binge drinking and to encourage a greater degree of personal responsibility for individual actions.

Paragraph 1.9 refers to an outline industry code of practice and the inclusion of internal sanctions and accreditation. Alcohol retail is different from other sectors in that it requires a licence to trade and therefore already has inbuilt minimum standards and sanctions. The industry has consistently expressed reservations about these aspects of a code, not least because of their complexity, the duplication of existing schemes and the potential competition law implications. The industry, and *ALMR* within it, is currently finalising its own internal standards of responsible retailing and promotion of alcohol and believe that this is the most appropriate vehicle for delivering the Government's objectives.

Alcohol Disorder Zones

We are extremely concerned that the consultation document provides so little detail as to how these schemes will be established, will operate and will be terminated. It makes it difficult to assess the real impact the proposals will have on the problems identified and the businesses likely to be affected. It is clear that the proposals have been hurriedly put together and have not been fully thought through.

For example, it is not clear whether the enforcement activity and financial penalties would apply only to problem premises or all premises within a given area. Paragraph 2.2 refers to actions by "licensed premises which are contributing to alcohol related disorder within the area" and paragraph 2.8 refers to the targeting of costs "at those premises responsible for alcohol related disorder", but the rest of the document appears to be premised on the basis that all outlets within a designated area would be affected by the action plan and the levy to be imposed as a result of designation. We firmly believe that sanctions should only be applied to those premises causing the problems.

Similarly, paragraph 2.3 states that zones would be designated where, "in the view of the police and local authority concerned, there was strong evidence of alcohol related disorder having reached clearly unacceptable levels". We are concerned that this appears to give too much discretion to the policy and local authority – who will be the primary beneficiaries of any designation – to act on the basis of subjective decisions. It is vital that any proposals in this



area are based on nationally agreed, independently verifiable criteria relating to evidence for imposition and removal of the zones. There also needs to be a clear appeal mechanism or measures to protect businesses affected by these decisions.

Where possible we have grouped our comments under the questions posed by the document. We have only responded to those questions we feel able to answer as representatives of retailers and the answers should not be taken as implying *ALMR* support for the overriding principle behind ADZs

Question 1

In order to provide a clear, transparent basis for the designation of such zones, we believe that there should be a clear link with new powers under the Licensing Act 2003. In particular, the designation of a zone should follow the same audit trail and meet the same stringent evidence requirements as set out in the Guidance to the Act before a special saturation policy may be adopted. In short, this provides for action only to be taken following representations from responsible authorities and requires clear evidence of a causal link between identified problems arising in a given area and customers of licensed premises in that area. It also provides for a degree of public consultation prior to the imposition of a zone.

We agree that issues of concern should, where possible, be resolved by means of an agreed action plan to prevent the designation of a zone or to get the designation lifted. However, we are concerned that there is no mechanism for ensuring that those responsible for the disorder actually take the actions necessary to put their own house in order. The action plan may therefore fail to deliver results despite the best efforts of the responsible majority. This is why it will be important to ensure that any sanctions or financial penalties only fall on those businesses responsible for the identified problems and are not applied in a blanket manner.

It is vital that there are clear national guidelines covering the establishment of the zone, the length of duration and the mechanisms for lifting the designation or reassessing the problem. We believe it will be important for all such designations to be time limited and to have an in-built sunset clause requiring their re-establishment if the problems are still persisting. This will help to ensure that the zone serves its purpose and does not become a long-term revenue generator.

Question 2

The basis for the scheme appears to be an agreed action plan to tackle identified problems and therefore prevent the imposition of an ADZ. The ADZ is therefore a weapon of last resort and a financial penalty should action not be taken and results achieved. However, we are not clear what the purpose of the warning period is and this has very real implications for considering its length – is the trigger for the imposition of the ADZ the failure to agree an action plan, the failure to implement it or the failure to achieve results?

The consultation refers to an 8 week period to agree and implement a package of measures. We believe that this may just about be adequate to begin the process of developing and agreeing an action plan, but is insufficient to allow for meaningful implementation and would certainly not be sufficient to see real results. The 8 week period may better be phrased as an early warning period to require all parties to come to the table, discuss the problem and agree an outline way forward. If the ADZ is a weapon of last resort as described above, it is difficult to see how consultation, agreement, implementation and evaluation could be delivered in less than 6 months.



It will also be important to consider what would happen if an action plan was agreed, measures were implemented but results were not achieved through no fault of the operators concerned. The imposition of an ADZ should not be automatic in such circumstances.

Question 3

We agree that any scheme should only recover additional costs associated with delivering the action plan or tackling the identified problems. We therefore believe that it is vitally important that the definition of additional costs and the mechanisms for calculating these costs are established nationally. In particular, there should be a requirement to present a clear budget with accounting and reporting mechanisms.

Question 4

This is the most crucial aspect of the proposals and one which – as we have already noted – the consultation paper provides no clear direction. We firmly believe that these costs should be targeted at those premises responsible for the identified problems rather than all businesses within a given geographical area. This is the only fair way of achieving the results without penalising responsible operators. It is also the only way of ensuring compliance by the irresponsible minority to any agreed action plan.

However, the consultation document appears to be premised on the basis that all licensed businesses within the zone should pay the charge. This contradiction must be resolved before the proposals are developed further.

Question 5

The apportionment of costs depends to a large extent on who is required to bear them. If all licensed businesses are to be included in the scheme, then the fairest system would be to link it to the rating bands used for determining licensing fees, with a multiplier for the largest capacity venues. If, as we believe, the scheme should be targeted at the trouble makers, then it may be best to include apportionment within the locally agreed action plan which underpins the ADZ.

Question 6

If the ADZ is to cover all licensed businesses, then it must, by definition, include all off-licences. Off-licence sales are not just relevant in the context of under age purchases, but also the serving of those already drunk. There is also increasing evidence to suggest that many people are buying alcohol from off-licences and consuming it in the town centre immediately after purchase – they therefore contribute to public disorder and nuisance.

As such, we believe that there is no need to include a specific trigger for inclusion unless such a trigger is also to be applied to on-licensed premises. This, however, suggests that the enforcement activity and financial penalties would only be applied to those premises causing the problem, not all businesses.

Question 7

The geographical coverage of the zone would need to be clearly defined and based on independently verifiable evidence. As such we believe that the most appropriate basis for determining this is the mechanism laid out in the Guidance to the Licensing Act for the establishment of a special saturation policy. This would require evidence to be presented by a responsible authority, provides for public consultation and prevents decisions being made on the basis of subjective views, anecdotal evidence or perception.



The inclusion of an appeals mechanism is vital, since without it there is a danger that such zones could be used simply to raise revenue. The magistrate's court would be the logical court of appeal.

Question 8

We firmly believe that the designation of all such zones should be clearly time limited at the start and should include a sunset clause requiring their review, reassessment of the situation and if necessary re-imposition. This reinforces the Government's suggestion that these should be short term measures designed to rapidly turn around clearly identified problems rather than long-term management tools. We recommend that all ADZs automatically end after 6 months and must be re-adopted at that time if the same problems still persist. It would, of course, be possible for a scheme to be imposed for a shorter period of time or for the designation to be lifted if the agreed results were achieved within an earlier time frame.

Paragraph 2.13 envisages that where a zone had been imposed the licensees would agree an action plan with the CRDP and others to address specific problems and may also be used for wider consultation and longer term arrangements. This could all be achieved within the existing framework of partnership action through CRDPs and begs the question as to whether the establishment of an ADZ is really necessary or helpful.

Question 9

We do not believe that payment should be enforced through licence penalties. These are subject to criminal rather than civil proceedings and have serious business implications. The non-payment of a levy should be dealt with through civil proceedings in the same way as non-payment of a BID contribution. The linkage of costs to business rates may help in this way in that payment and enforcement of it could be achieved through the rating system.

Question 11

We note that the Government believes that the introduction of ADZs should not cut across the development of BIDs and other voluntary initiatives. However, we do not share the Government's sanguine approach. If all businesses within an ADZ are to be subject to the levy, there is a very real danger that many responsible operators involved in voluntary or BID arrangements will find themselves paying twice. We believe that there must be some mechanism for ensuring that this does not occur and this further argues for the charge only to be applied to those businesses responsible for the problems.

Under Age Sales

We note the reference to the results of the targeted sting operations on under age sales carried out during the summer and Christmas Alcohol Enforcement Campaigns. We believe that it would be helpful to place these in context and in particular to highlight the fact that the level of offences is in premises already identified as being a problem and that there was an overall decrease in offences during the Christmas campaign.

Whilst we are keen to work with Government to tackle persistent under age sales and equally under age purchases, we do not believe that a further additional closure power is necessary at this time. It is already an offence to serve under age and there are tough new penalties for individuals and companies who do so. Moreover, the new Licensing Act allows sanctions to be applied to the premises for offences under the licensing regime and for businesses to be closed following review proceedings. We would expect that these new powers will be used to the full and would equally apply to businesses persistently selling under age. A review



leading to temporary closure or permanent revocation of the licence would arguably be more effective.

Again, we have grouped our comments under the questions posed by the document. Answers should not be taken as support for the overriding principle behind the introduction of a new closure power, which we believe to be unnecessary.

Question 13

We believe that closure should only be triggered by the Licensing Authority following a formal review of the licence. Such a review would in turn be triggered by a request from the police or trading standards officers on the basis of evidence of persistent offending. This evidence may include test purchasing operations or the imposition of several fixed penalty notices. This is the only mechanism for accurately assessing individual or corporate responsibility and the level of due diligence exercised.

Question 14

As noted above, we believe that this power should only be exercised by the Licensing Authority as a consequence of a review.

If a new, separate power of immediate closure is to be introduced, then the procedure for deploying it should mirror that set out in the Licensing Act for closing premises in anticipation of likely disorder.

Question 15

We do not believe that it is necessary to develop parallel offences and penalties in addition to those already available under the Licensing Act.

Changing the Culture

We believe responsibility for changing the culture of drinking in this country lies first and foremost with the Government. Only Government can send a clear message out to those seeking to buy under age or to consume to excess that their behaviour is against the law and is unacceptable to the moral and responsible majority.

In respect of under age purchases, we have for some time argued for a national proof of age or ID card to enable retailers to meet their 'positive duty' to determine age prior to sale and so police under age purchases. We urge the Government to press ahead with this as a matter of urgency. We note the reference to a "No ID No Sale" policy, and would draw the Government's attention to the fact that it was Bill Clinton's personal involvement in just such a public education campaign which was instrumental in reducing the level of under age purchases and consumption.

Finally, we would urge the Government to impose harsher and more rigid penalties for those individuals flouting the law and acting disorderly, and give a clear direction to police and other enforcement bodies that a zero tolerance approach will be adopted. There may also be an opportunity to explore the use of community service actions to encourage greater individual responsibility eg requiring those found urinating or vomiting in public to carry out weekend street cleaning activities.