

31st May 2016

A New Liquor Licensing Law for Jersey

Consultation Response Summary

Executive Summary

On 5th February 2016 the Shadow Alcohol and Licensing Policy Group ('the Shadow ALPG') issued a consultation paper entitled, 'A new Liquor Licensing Law for Jersey.' The consultation paper generated 64 responses in total. These included 11 submitted by, or on behalf of, industry stakeholders.

The consultation was divided into six parts, which addressed various changes in thinking about licensing policy since the consultation in 2014. Responses in respect of parts 1 to 3 and parts 5 to 6 of the paper were broadly or cautiously positive. While some businesses had reservations about the licensing objectives, some aspects of the application process and the possibility of higher fees, overall the proposed new legislation was well-received, with the exception of part 4.

A clear majority of respondents opposed part 4 of the paper, which proposed the application of restrictions on alcohol price promotions. Many of those respondents considered that government intervention in market price setting had not been justified and / or that the majority of consumers of alcohol were responsible and would be disadvantaged unfairly by such a restriction. A small number of respondents expressed support for the alcohol price promotion proposals on the basis that the public tended to underestimate the full extent of alcohol-related harm in Jersey or that price promotions made alcohol more accessible to vulnerable people. Of those that expressed a view regarding the alcohol price promotion proposals, it was sometimes less than clear whether they were responding to the petition and associated media campaign launched by off-licence retailers or from a broader perspective, having considered part 4 of the consultation paper.

A limited number of the alcohol licensing issues raised were outside the scope of the consultation paper. The Shadow ALPG was nevertheless grateful to receive these responses, which will be given due consideration at a later stage in the development of the new law and regulations.

1 The Licensing Objectives

1.1 Industry stakeholders expressed concern at the discontinuation of the proposal to apply a 6th licensing objective 'to support the local economy.' Comments from the industry included the following –

'The five licensing objectives are very much to the economic detriment of our industry ... There is clear focus on the negative aspects of alcohol consumption however we feel there should be some balance taken into consideration given the aesthetic and financial benefits our industry brings to this island in the form of tourism related business, not forgetting the enjoyment factor experienced by the majority of our law abiding Islanders.'

1.2 The Shadow ALPG, having reflected on the full range of feedback given, maintains its view that a specific economic licensing objective is unnecessary. It is worth noting that the licensed trade in the UK has continued to operate quite successfully for many years in the ongoing absence of an economic licensing objective.

1.3 An economic licensing objective might also be expected to generate practical complications. The licensing authority might be expected to weigh monetary gain against the scope for harm to children. Long-standing not for profit clubs that wish to obtain or retain a liquor licence might also be called upon to demonstrate scope for economic benefit. Additionally, factoring in the economic contribution of a business would mean the Licensing Authority taking a view on the profitability of the business – which would be outside the competency of that body.

1.4 Responsible hospitality industry and 6th category licence holders will continue to be valued contributors to the Island economy. The new law will maintain the principle that licences for the sale of alcohol will be granted as long as an applicant can demonstrate that their businesses will operate in a manner that is not to the detriment of the statutory (and equally weighted) licensing objectives. Subject to that caveat, the economic contribution of licensed premises will be welcomed.

1.5 Additional industry opposition was expressed regarding the continued inclusion of the 5th (public health) objective, as per the position in Scotland. The Shadow Alcohol and Licensing Policy Group (Shadow ALPG) was invited to consider the practicalities of linking general alcohol-related harms to individual licensed premises. It was suggested that such difficulties might account for the fact that England and Wales continued to apply only 4 licensing objectives –

- the prevention of crime and disorder
- public safety
- the prevention of public nuisance
- the protection of children from harm.

1.6 While the position in England and Wales is noted, the Shadow ALPG also notes that there have been recent calls for reform on the UK mainland. For example, in 2014 the UK Local Government Association expressed support for the adoption of a public health licensing objective in England and Wales on the basis that measurable health impacts were linked to the consumption and availability of alcohol.¹

1.7 The public health objective will allow the Licensing Authority to recognise that some businesses are more problematic in terms of public health than others. This is likely to be aligned to some degree to considerations of public safety and disorder. Consideration will be given to business on a case by case basis and the Shadow ALPG and future Licensing Assembly will not treat public health as a blanket reason for denial of licenses.

Outcome

The Shadow ALPG maintains its proposal to develop a new Licensing Law based on the following 5 equally weighted licensing objectives –

1. to help reduce alcohol related crime and disorder
2. to better secure public safety
3. to help prevent public nuisance
4. to help protect children from alcohol related harm
5. to better protect and improve public health

The forthcoming Statement of Licensing Policy will recognise that a business meeting the 5 licensing objectives will have a reasonable expectation of being permitted to trade.

2 A Replacement for the Licensing Authority

2.1 Twelve respondents commented on this proposal. There was a degree of resistance to the concept of a licensing authority comprised primarily of politicians. Several suggested that it would be preferable for the members of the new licensing authority to be entirely independent or members of the judiciary. A number of respondents nevertheless expressed a preference for avoiding additional cost wherever possible. In this regard, the respondents that expressed concern regarding political membership of the authority tended not to acknowledge the possibility that independent or judicial members might add cost.

2.2 Concern was expressed by several hospitality industry representatives regarding their perception that applicants might have to obtain hard copy reports from statutory consultees prior to submitting a licensing application.

2.3 For the avoidance of doubt, the intention would be to take as much of the new licensing application process online as quickly as is practicable and to minimise bureaucracy.

2.4 Several other respondents submitted that the targeted 41 day turnaround for contentious licence applications should be improved upon, notwithstanding that the system in place under the Licensing (Jersey) Law 1974 tended to be significantly longer.

2.5 The Shadow ALPG considers that further significant reductions in the turnaround time could only be achieved at the expense of proportionate consultation with the relevant parish. It does not consider that this would be in keeping with its commitment to maintain transparency and participation.

¹ [Rewiring Public Services: Rewiring Licensing](#) – Local Government Association January 2014 – p.8

2.6 Lastly, the Shadow ALPG is of the opinion that the current plans for turnaround times are a significant improvement over the current arrangement. They are as follows-

Current applications

Minimum period, assuming optimal timing of application - 45-61 days
Longest possible period between application and determination – 137 days
Opportunities to submit per year – 4

Contested applications – New System

Ordinary period of consideration – 41 days
Longest possible period between application and determination – 81 days
Opportunities to submit per year – 8

‘No-objection’ applications – New System

Ordinary period of consideration – 30 days
Longest possible period between application and determination – 70 days
Opportunities to submit per year – 8

Outcome

The Shadow ALPG maintains its proposal that the new Licensing Law should establish a new licensing authority to determine applications for a liquor licence in accordance with published criteria. The new authority will be comprised of –
(a) an independent and suitably qualified Chairman and Vice Chairman, and
(b) 7 States Members.

Parishes will retain the right to consider applications on the timescale previously proposed.

3 The Alcohol and Licensing Policy Group

3.1 No specific objections to this proposal were raised in the small number of responses that cited this proposal. Industry stakeholders were clearly keen to know more about the proposed Licence Holders’ Stakeholder Group that should support and advise the ALPG.

3.2 The Public Health section of the Health and Social Services Department recommended that the density of licensed premises should be inscribed in ALPG policy as a primary criterion for review at the initial stage of an application for any new alcohol licence and that further consultation should be a requirement in the event of an application being received for a new establishment within an area deemed to have excess provision. The ALPG will be invited to consider this proposal in due course.

3.3 Further discussions with key stakeholders regarding the formation of the Licence Holders’ Stakeholder Group will be held later this year.

Outcome

The intention remains to put the Shadow ALPG on a statutory footing via the new Licensing Law as soon as possible and for the statutory ALPG to determine, publish and update the liquor licensing policy to be applied by the new licensing authority.

4 Restricting Alcohol Price Promotions

4.1 The clear majority of respondents focussed their attention solely on the subject of restrictions on alcohol price promotions. Of those that expressed a view, it was sometimes less than clear whether they were responding to the petition and associated media

campaign launched by off-licence retailers or from a broader perspective, having considered part 4 of the consultation paper.

4.2 On 3rd March a media campaign and associated petition under the banner 'Save our Offers' was launched by a consortium of off-licence retailers. Periods of greater activity on the part of those concerned with the campaign and petition tended to correlate with an increase in the number of responses submitted to licensinglaw@gov.je. Of those respondents, the majority expressed opposition to the general concept of restricting alcohol price promotions without referring to part 4 of the consultation paper.

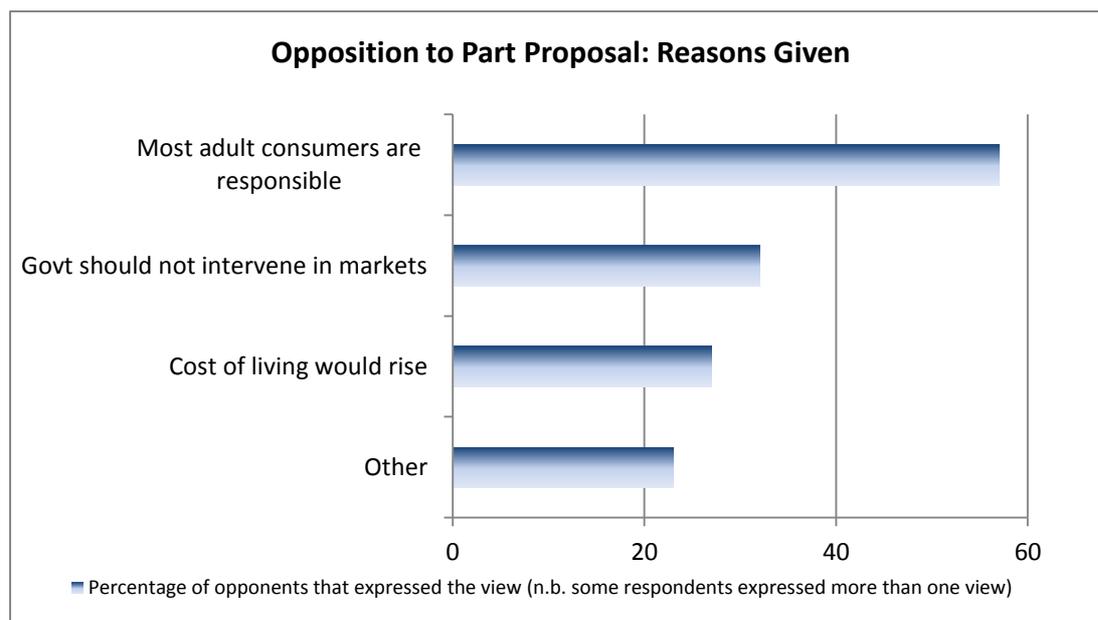
4.3 To date, the petition organisers have not presented their petition to the States Assembly, the process for which would cause the number of signatories to be verified independently. In the absence of this independent verification, the Shadow ALPG has had to reach its own conclusion as to the relative weight that should be given to the petition.

4.4 Three main grounds for opposition to the general concept of restricting alcohol price promotions were expressed in the responses submitted to government. These were: that respondents were responsible drinkers and / or that the majority of consumers drank responsibly and that the responsible majority would be punished by the proposal; that market intervention by government was unwarranted, inappropriate, and / or would generate unwanted consequences; or, that the proposal would increase the cost of living. Relevant submissions included the following -

'I will decide how I will drink responsibly. I am offended that you think you can decide that for me.'

'I have signed the petition in Checkers and Marks and Spencer regarding the proposal to stop the special offer for alcohol. Consumers are adults with their own mind, WE can decide when and when not to have a drink or a few drinks. It is patronising and insulting the Jersey Government saying it will be for the good of the people...utter rubbish!'

4.5 Other correspondents suggested that government should restrict its activities to educating, rather than legislating, on health grounds.



4.6 A limited number of respondents expressed strong support for the price promotion restriction as proposed in part 4. Their comments included the following –

‘The associated costs that are picked up by the taxpayer in hospital admissions, ongoing medical treatments, social costs associated with loss of earnings, criminal and policing costs as associated with antisocial/violent and criminal behaviour that is fuelled or exacerbated by alcohol use and the costs associated with supporting children and partners through the carnage of families who are torn asunder by alcohol misuse do not justify these deals and offers that make profit for the supermarkets.’

4.7 Several other respondents contended that government policy should differentiate between consumption of alcohol in supervised licensed premises and consumption at home or other unsupervised private residences –

‘Would it not make more sense to allow drinks promotions in pubs and clubs? This is an environment where drinking is supervised by fully trained bar staff and security, if someone is deemed to be drinking irresponsibly they are asked to leave the premises.’

Outcome

The Shadow ALPG is committed, over the longer term, to achieving a sustained reduction in Jersey’s higher than average alcohol consumption rates.

Alcohol generates significant income from excise duties and, as is widely acknowledged, a culture of sensible drinking can also support vibrant communities. It is nevertheless the case that the associated overall net economic and social costs to society in the form of alcohol related domestic violence incidents, night time economy disorder and alcohol-related short and longer term health consequences must be weighed up and reflected in government policy.

The Shadow ALPG notes the views expressed with regard to alcohol multi-buys and other price promotions and will not, at this stage bring forward any restrictions in law. The Shadow ALPG will, however, work to identify and progress alternative approaches to support reductions in alcohol consumption in partnership with our community and in consultation with the hospitality and retail industry and other stakeholders.

5 Personal Licences – Removal

5.1 A small number of respondents expressed a view on this proposal. Industry stakeholders consider that arguments for and against the adoption of a personal licence scheme can be made. On balance, however, the hospitality industry appears broadly content with the proposal, subject to clarification of the detail.

5.2 There is an additional related desire for the new law to make it simpler for businesses to administer holiday periods and other temporary absences without hindering the ability to trade responsibly. The Shadow ALPG notes this desire and will consider options to simplify the process.

Outcome

The Shadow ALPG maintains its decision not to proceed with the introduction of personal licences. It will instead consider how new training requirements for staff might resolve issues with holiday cover and temporary absences that have been highlighted by the hospitality industry.

6 Consideration of Fee Structures

6.1 The 8 responses that directly referenced this proposal were again primarily from the hospitality industry.

6.2 Several industry submissions contended that fees for on-licensed premises were either already high enough or were disproportionately high in comparison with UK equivalent rates. In addition, several industry consultees questioned why licensed premises requiring multiple categories of licence to legitimise their business model should have to pay a fee in respect of each licence.

6.3 A number of expressions of support were offered regarding the proposal that off-licensed retailers should bear a greater proportion of the future fee take. One major industry stakeholder concurred with the anecdotal evidence available to the Shadow ALPG that off-licences now accounted for two-thirds of the market for alcohol sales in Jersey. It did not, however, offer additional evidence in support of this view.

6.4 The Shadow ALPG is working to secure better data regarding the market share of on and off-licensed premises. Analysis of data obtained via previous Household Income and Spending Surveys should provide a clearer picture of the balance of alcohol sales across the on and off-licensed trade.

Outcome

The Shadow ALPG will propose a revised fee mechanism that will better reflect the quantum of alcohol sold by the business and the resulting potential for harm arising from those sales.

7 Next Steps

7.1 The Shadow ALPG will now oversee the development of law drafting instructions which will be used to revise and further develop the draft Licensing Law previously published as part of the Alcohol and Licensing Strategy for Jersey.² It is envisaged that the draft Law will be lodged in sufficient time to allow the States Assembly to debate it before the end of 2016.

7.2 In the intervening period, the Shadow ALPG will continue to engage with the Economic Affairs Scrutiny Panel and may further amend its proposals in response to recommendations made by that Panel.

7.3 Work on subordinate regulations concerning licence categories, fees, administration and other matters will commence later this year. It is envisaged that those regulations to be lodged with and debated by the States Assembly prior to the end of 2017.

² Presented to the States Assembly as [R.139/2014](#)