

Licensing Law policy paper

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Background

This Licensing Law Policy Paper proposes a programme of change following the conclusion of Economic Development Department's 2009 consultation on a Green Paper that proposed changes to Jersey's existing Licensing Law.

That Green Paper, which was drafted in conjunction with Health & Social Services and Home Affairs Departments, sought opinion from various stakeholders regarding high level licensing policy¹ and the need for a re-think on associated public health and public order objectives.

In bringing forward this Policy Paper, the Economic Development Minister is clear that the vast majority of Islanders drink responsibly and safely and is keen to ensure that the new law reflects this. There is however, a minority that does not act in a responsible or safe manner and it is equally important that the new law supports appropriate law enforcement measures to counter this.

It is important to note that a culture of sensible drinking supports pubs and clubs as part of the fabric of our society, creates thriving communities and makes an important contribution to employment and the economy at a time of economic uncertainty.

The 2009 Green Paper explored options for the future development of licensing legislation and sought opinions on all areas of licensing policy², including 'sacred cows' such as the continued involvement of the Licensing Assembly and the age restrictions for alcohol sales.

The Economic Development Minister and his officers have developed the proposals in this Policy Paper based on the Green Paper feedback that was received from key stakeholders -including organisations and individuals involved in the licensed trade and its regulation plus States Departments. This feedback has added considerable detail and clarity to ideas originally expressed in the Green Paper and introduced new concepts and different viewpoints. This has enabled these more detailed and workable proposals to be drawn up.

¹ The Green Paper sought opinion on 6 key areas: high level policy issues; the licensing process; licensing; general provisions for the sale and consumption of alcohol on licensed premises; off-licences; enforcement

² 30 responses were received from a broad cross-section of stakeholders (see Appendix 1)

While the Economic Development Minister is ultimately responsible for the Licensing Law, the responsibility for maintaining the safety and suitability of such premises falls upon the uniformed services, the Fire and Rescue Service and the States Police. Likewise, the Economic Development Department is not responsible for meeting the healthcare needs either of those immediately affected by over-consumption of alcohol or those with illnesses resulting from long-term alcohol consumption, as this falls to the Health and Social Services Department.

Consequently, the States of Jersey Police, the Fire and Rescue Service and the Health Promotion Unit have been significantly engaged in this process, and the Minister would like to thank the representatives of those organisations for the work which they have undertaken to assist in the development of licensing policy.

Given the historic difficulties encountered in trying to balance the diverse interests of licence holders, consumers, professional bodies and government departments, it is not realistic to expect that consensus can be found on all points. This Licensing Policy Paper shows the thinking of the Minister on key elements of licensing policy, to indicate what can be expected when legislation is brought forward.

The paper sets out the intention to develop new licensing legislation in two phases. Phase 1, to commence in early 2014, will be to develop an overarching system for the management of licences in Jersey. This will not come into force immediately. Phase 2 will then create a system of licence categories to replace the current system, and bring the legislation fully into force. It is currently anticipated that this will take place in 2015.

This Licensing Law Policy paper is intended to be read alongside Council of Minister's draft Alcohol and Licensing Strategy and the Health and Social Services Department's discussion document *Preventing Harm caused by alcohol*, both of which can be downloaded from www.gov.je/consult.

1. Licensing objectives

During the Green Paper consultation there was unanimous support for the proposal to introduce a set of licensing objectives, specifically concerning public health and public order. It is recognised that excessive consumption of alcohol is damaging to health and that in some cases it can lead to anti-social behaviour and violence. The establishment of five clear objectives should help ensure that all parties involved in the licensing process are focused on common goals essential to the balance of differing interests and the well-being of our community.

The five licensing objectives are:

- To help reduce alcohol related crime and disorder
- To better secure public safety
- To help reduce public nuisance
- To better protect and improve public health
- To help protect children from alcohol related harm

Scotland overhauled their own Licensing arrangements in 2009 including the introduction five similar objectives (which are identical to the four Licensing Objectives detailed in the UK's Licensing Act 2003 with the addition of '*protecting and improving public health*'), and subsequent surveys have suggested that awareness surrounding licensing issues has been raised and that licensing standards have increased to some extent.³

The introduction of these objectives clearly defines what we are seeking to achieve from a new licensing law.

2. Licence categories

Of all of the components of the licensing law policy paper, the licence category system has been the most challenging to develop.

During the Green Paper consultation, considerable support was expressed for a reduction in the number of licence categories (only two respondents said they would not be in favour) down from the current nine different types (categories one to six, plus three types of licence within category seven).

This solution and others are examined below. As indicated in the introduction, it is not intended to bring any changes to the licence system forward immediately, but rather to develop the overarching law and set the Alcohol and Licensing Policy Group in place before moving forward with a new system of categories.

³ An evaluation of the implementation of the objectives of Licensing (Scotland) Act 2005; June 2011

- A single licence – UK method

In the UK, there is only one 'type' of on-licence, and the conditions of each licence are developed by the relevant licensing authority according to the needs of the business and the context in which it is operating. This is the most flexible and responsive outcome as it allows the licensing system to exactly meet the needs of each business and also allows the wellbeing of nearby residents and other businesses etc. considered on a case-by-case basis.

However, in the UK, local licensing authorities determine applications. They are convened and managed solely for the purpose of making decisions about licensing matters, and so the level of effort that they can therefore invest into each licensing decision (be it consideration, reconsideration, variation or withdrawal) is much higher than is realistically possible locally.

In Jersey, the licensing decisions are taken by the Licensing Assembly, which is comprised of the Bailiff and the Jurats. In another setting these persons are separately tasked with taking necessary decisions of law and fact in the higher Courts in Jersey. The Licensing Assembly cannot, therefore, devote the same resources to each liquor licence that the UK licensing authorities can as its members have other, arguably more important roles and give their time on a voluntary basis.

With this in mind, whatever system is developed needs to ensure that there is no significant additional burden placed on the Assembly. There is therefore a requirement for a defined framework within which to consider licences.

In the course of work on the licensing law, an attempt has been made to develop an 'open' licence system similar to the UK under which each individual premises is granted a 'bespoke' licence developed from a set of templates but conditioned individually. No way could be found to reconcile that model with the continued reliance on the Licensing Assembly.

Given that public support (as expressed in the 2009 Green Paper) for the Licensing Assembly is high, and the Assembly offers its services for free, no licensing system which requires replacing the Licensing Assembly can be supported.

- Fewer licence categories – a simplified method

If the 'one licence' model is abandoned, then to meet the expectations as expressed by respondents to the Green Paper the overall number of licence categories should be reduced. This would mean a redistribution of the current licences across new licence categories.

The challenge in developing any new categorisation system is the existence of businesses which have built their operation models to fit the current system. The 1974 category system has established itself firmly in the industry and defines the mode of operation of the businesses selling alcohol in Jersey.

One central principle of this policy work has been that existing business models should be protected. If a business has established itself in the licensed trade acting responsibly in an acceptable manner then it is not reasonable to restrict how that business can act by changing its licence category. This means that there is no scope to merge licensing categories if this will have a restrictive effect.

Another central principle has been that there should be no wholesale liberalisation of the licensed sector, as this would not be in keeping with the responses to the Green Paper in 2009 or the general direction of States policy. This means that there is no scope to merge licensing categories if this will have a permissive effect.

As an example of the restrictions that this placed upon the development process, the combination of hotel, restaurant and club licences (licence categories two, three and five) was discussed, on the grounds that these businesses had primary purposes that were not the supply of alcohol, they all closed at 1.00am, and that they all appear to be of less concern in terms of policing etc. than public houses.

However, any amalgamation of those categories would have to take account of the operation of all of the businesses affected. In the case above, unless government was willing to restrict the operation of some licence holders, or allow more permissive operation of others, a category would have to simultaneously take account of the different restrictions on all the categories to be amalgamated.

The outcome of this would be that a single licence type would need to simultaneously permit the public to be served alcohol at tables (from restaurant licence) and restrict them from entry (from hotel and club licence), require a list of members (from club licence), require drinkers to be resident (from hotel licence), require that food be served etc.

This could be resolved by liberalising the arrangements to allow hotels and private members clubs to provide alcohol by table service to the public (as restaurants can), and abandon the need for clubs to provide lists of members, etc. This would allow several categories to be amalgamated, with the effect of simplifying the licensing system. It would also have the effect of allowing

approximately 50 additional premises that do not currently serve alcohol to the public to do so. Alternatively, the limitations currently placed upon hotels and clubs could be applied to restaurants, which would potentially force a change to the business model of over 100 licence holders.

Therefore, while a reduction in the number of categories would be a welcome simplification to the licensing system, it cannot be achieved without a significant re-ordering of the businesses in the licensed sector. Nothing in the consultation so far carried out on this issue has indicated that this would be in the interests of the Island.

- Multiple licensing and 'zoned' licences

One issue with the potential for confusion is the existence of multiple licences in respect of the same business. The system of multiple licencing is entrenched in the local licensed sector, with many on-licences holding more than one category of licence⁴. This allows flexibility but has the potential to cause confusion, as multiple licensing regimes are in operation over the same area.

In practice, it is generally accepted that the most permissive of the active licences generally applies, although this is not formally clarified in the law and the conflicting provisions of licences can cause difficulties.

Attempts to do away with multiple licensing have encountered the same difficulties as the amalgamation of licence categories – either businesses are negatively affected by the withdrawal of an established licence, or some merged category is created to combine licences which will fail to meet all the necessary requirements.

In order to provide clarity as to the operation of licences, it is proposed that where multiple licences apply they are made 'zonal', and each applies to an exclusive part of a business. For instance, if a business operated a restaurant and a hotel from one premises (as several do), then the business would be required to indicate to the Licensing Assembly where the boundary of each sections lies, and each section would be licensed separately.

This would ensure that an area was only licensed for one purpose, avoiding conflicting requirements and simplifying compliance, and would have an effect on fees, as the per-person element of each licence would be chargeable only on the designated area, not the entire premises as is currently the case. It would also allow for the clear stipulation of where the licensed areas ended, which under the current law is less than clear, as the 'premises' itself holds a licence in all

⁴ As of 2011, 385 on-licences held 517 licences between them – an average of 1.3 licences per business, with several business holding 3 licences.

cases, regardless of whether the premises is simply a facility for the provision of alcohol or part of a larger business.

In some cases, the dividing line between licences can be rather arbitrary – such as the point at which a hotel or restaurant bar area ends. In these cases, the intention is to allow suitable premises to run a public bar as part of their other operations, if the Licensing Assembly deems it acceptable that they do so.

By doing this, the compliance burden for restaurants currently holding licences for public bars is reduced⁵, those businesses will require only one licence, and the liberalisation of alcohol sales is avoided by requiring the Licensing Assembly to approve the operation of a bar – in the same manner that they must currently approve 1st category licences.

- A revised seven-category system

In light of the above considerations, the proposal is that the licence system be revised into the following categories-

Category A licences would replace Taverner's licences

These licences would be suitable for operators **whose primary business is the sale of intoxicating drinks**, and would allow any member of the public over 18 to purchase alcohol from a bar. These businesses would cease to serve alcohol at 11.00pm, and the current provisions for drinking up time would be retained.

The more limited opening hours reflect the historic position of these establishments and the reluctance of society in general to allow all of them to open into the night, with a view that drinking hours should be regulated in the general interest of public health and public order.

The difference between Taverner's licences and Category A permits would primarily be the enhanced compliance requirements outlined elsewhere in this paper.

Category B licences for hotels would replace Residential licences

This licence would cater for hotels and would allow the sale of alcohol to residents & bona fide guests at any time (at the licence holder's discretion).

⁵ Over 60 premises hold licences for both restaurants and public bars.

Under the current regime hotels fall into two distinct categories, Residential, which focuses on persons accommodated for reward (residents) and prohibits serving members of the general public, and Comprehensive which allows both (within the permitted hours). The proposed scheme would see the elimination of the Comprehensive category which currently does not allow for the delimitation of multiple operating models for the purpose of applying licence conditions.

Establishments which fall into this category will be designated as either permitted to operate a public bar or not depending on the suitability of the premises. The Licensing Assembly would be responsible for deciding which hotels will be entitled to operate a public bar with respect to new applications or requests to upgrade.

Category C licences would replace Restaurant licences

This licence would authorise the sale of alcohol for consumption whilst taking a meal on the premises up until 1.00 am where **the primary purpose of the premises must be the business of a restaurant** and alcohol must be served whilst seated at a table. However, restaurants would also be designated as permitted to operate a public bar until 11.00 pm or not depending on the suitability of the premises.

The Licensing Assembly would be responsible for deciding which restaurants will be entitled to operate a public bar with respect to new applications or requests to upgrade.

Category D licences would replace the 5th category (private members clubs)

This would be a direct replacement and there would be no significant changes to the licence conditions.

Category E licence would be a 'nightclub' category

This would be a dedicated nightclub licence. It would be subject to a restrictive regime, and contain the strictest provisions in respect of security, staffing, maintenance of order, suppression of noise and the behaviour of patrons. It would also attract the most consideration from the police and fire services, as these businesses create the greatest risk of public order and public safety issues.

This would be the least numerous type of licence. It would comprise those businesses which now operate as nightclubs, as well as those which are currently open until 1.00am primarily to sell alcohol by virtue of their status as a place of entertainment.

The Licensing Assembly would be responsible for the designation of a 1.00 am or 2.00 am licence. The Licensing Assembly may wish to take into consideration policy set by the political oversight group in this matter.

Category F licence would be for 'places of entertainment'

This category would contain those establishments which previously fell into category seven as cinemas, theatres and other such places of entertainment. The licence conditions would remain the same with a 1.00 am threshold for the sale of alcohol on weekdays and the usual closing time for all other days as per the existing permitted hours.

Category G would replace the current 6th category for off-licensed premises

It is not anticipated that there will be significant changes to the conditions for premises operating as off-licences, beyond the compliance requirements detailed elsewhere in this paper.

Outcome

To an observer who was blind to the category of licence held by each business, the outcome of this new scheme would be a system of alcohol provision that looks very much like the current one. That being said, the new licence scheme will be better managed with less confusion and will support a rationalised fee structure.

Phase 1: Framework law		Phase 2: Sub-ordinate legislation Including confirmation of transitional arrangements			
Premise licence No time limit on duration of licence. Standard and specific conditions can be applied.		Note – this is a guide only and must be read alongside the more details information above.			
Category	Purpose	Proposed hours for serving alcohol subject to review as part of development of subordinate legislation	Persons over 18 who can be served alcohol	Persons under 18 on premises?	Other standard conditions
A	Pub licence	Until 11.00pm ^A	Any person	Until 9.00pm	
B	Hotel licence	At any time ^B	Any resident or their guest ^D	At any time	
C	Restaurant licence	Until 1.00am ^C	Any person having a meal ^D	Until 1.00am	
D	Private members club licence	Until 1.00am	Members and guests only	If member or guest	
E	Nightclub licence	Until 1.00am or 2.00am ^E	Any person	At no time while alcohol is served	Door staff accreditation; suppression of noise
F	Place of entertainment licence	Until 1.00 am	Any person partaking in entertainment	Until 1.00 am	
G	Off-licence	Until 10.00pm	Any person	No limitation	
Personal licence Standard conditions will be applied					
Special events licence Standard and specific conditions can be applied					
Temporary licence Time limited whilst compliance work is undertaken					

In each case the new scheme would have standard conditions in respect of each category, and retain sufficient flexibility to allow specific conditions to be applied to a licence if the Licensing Assembly saw fit, based on the advice received. Also, there will be the capacity to modify licences which were subject to reconsideration due to public disorder or breach of an existing licence condition, for instance to apply restrictive conditions in the interest of meeting the licensing objectives.

3. Alcohol and Licensing Policy Group

The management of the alcohol industry is not simply a matter that concerns the Economic Development Department. The new law will reflect this by widening the scope of consultation on alcohol licences to include all uniformed services within Home Affairs. This will ensure that the Licensing Assembly has access to expert opinion on each individual application.

However, there is also a requirement to ensure that the general approach to liquor licensing is well managed. In order to develop effective policy for the treatment of licences it is therefore important that there be on-going consideration of the objectives of the licensing law at political level.

Under the new law, such consideration could be offered by an advisory group consisting of the Chief Minister (Chair), the Minister for Economic Development, the Minister for Home Affairs and the Minister for Health and Social Services.

These Ministers (with officer support) would advise the Economic Development Minister, in support of an annual report, issued by the Economic Development Minister to the Licensing Assembly. The purpose of that annual report is to provide direction to the Assembly on matters related to the issuing of all alcohol licences and associated conditions. This would help to ensure that the overall treatment of liquor licences could be seen to be transparent, fair, consistent and reasonable.

4. Determining authority and appeal mechanism for licence consideration

In Jersey, liquor licences are controlled by the Licensing Assembly, which is constituted from the Jurats, and headed by the Bailiff. This is a somewhat different system from that in the UK, which uses local licencing authorities composed of dedicated adjudicators. The responsibility for determining licensing applications fits well with the role of the Jurats as 'judges of fact', although as the Jurats have an integral role in the justice system of the Island, they cannot devote the time or resources to the issue of licensing that might be available from a dedicated authority.

The current arrangements for determining licences is supported by the responses to the Green Paper, with respondents indicating that in general terms the current Licensing Assembly system worked well, although a desire was expressed for more frequent meetings, accessible at shorter notice.

One inherent advantage of the Jurat system is that highly experienced judges are available effectively for free. Given that the total income derived from licensing fees is only intended to increase in line with inflation, there will be no reserve of funds to develop and run an independent determining body similar to that in the UK. Further, the Jurats have indicated that they are content

with the responsibility as it lies, and given that there has been no widespread call for an overhaul of this area it would seem unwise to try to re-develop an effective system.

That being said, there continues to be an issue with the effective appeals against decisions of the Authority. As the Jurats and the Bailiff comprise (in other circumstances) the highest court in the jurisdiction, licensing applications are effectively sent 'straight to the top' on first consideration. This creates difficulties in managing appeals, which should naturally flow to a higher authority for consideration.

To resolve this issue, the Licensing Assembly has suggested that under the new scheme it should sit only with a presiding judge and two Jurats, and that there should be a route of appeal to the Royal Court which would sit as the Superior Number (i.e. at least 5 Jurats) in order to give a wider perspective on appeals.

The Licensing Assembly's suggestion is supported.

5. Age of sales

It is clear from the responses to the Green Paper that there is general support⁶ for maintaining the statutory minimum age for the purchase of alcohol for consumption within on-licensed premises at 18. This is in keeping with the 'age of majority' in most jurisdictions⁷, including Jersey⁸, notwithstanding that some rights usually associated with adulthood are now available at a younger age (in particular marriage⁹ and the right to vote¹⁰) than the age of majority. Also, the concept of legal drinking at this age appears to be firmly fixed in the public consciousness.

That being said, some governmental stakeholders have asserted that an increase in the age of permitted sales, for instance to 21, would be likely to result in a decrease in overall alcohol consumption. Assuming that 18-20 year olds acted in accordance with the law, this would be likely, if only because every individual would consume less alcohol while under 21.

Realistically, though, it must be acknowledged that this might not be the case. Given the prevalence of underage drinking in all jurisdictions (45% of pupils aged 11-15 admitted drinking alcohol in 2010 in the UK and 36% of 14-15 year olds reported drinking alcohol in Jersey in

⁶ Licensing Law Green Paper 2009 - 20/26 (77%) respondents to the survey agree with minimum age staying at 18. Only 1 respondent suggested an increase to the age of consent (the Head of Health Protection Services). The other (20%) did not comment or have not completed relevant question.

⁷ World Health Organisation, *Global Status Report on Alcohol and Health 2011*, Geneva.

Of the 147 reporting jurisdictions, approx. 100 had a minimum age of 'serving or selling' alcohol set at 18.

⁸ Age of Majority (Jersey) Law 1999

⁹ Marriage and Civil Status (Jersey) Law 2001

¹⁰ Public Elections (Amendment No. 2) (Jersey) Law 2008

2010)^{11,12}, at a minimum sales age of 18, it seems unlikely that there would be total abstinence on the part of under 21s, while it is likely that there would be a considerable increase in illicit purchasing.

Concerns about general 'fairness' to 18-20 year olds and a move away from the age of majority have also been raised.

Accordingly, there is no intention to change the statutory minimum age for the purchase of alcohol.

More support¹³ has been expressed for an increase in the statutory minimum age for off-sales only to 21, with the minimum permitted age of consumption of alcohol generally remaining at 18¹⁴. The States Police and Health and Social Services have both indicated that they believe this would lead to less alcohol reaching people under 18, as the 'bridge' of older friends buying alcohol legally for illicit provision to underage consumers would be weakened.

Arguably, a separation in the statutory minimum age of on and off sales might encourage young people to start drinking in a controlled on-licence environment. This would have a beneficial effect on their learned behaviour in respect of alcohol, as they would have to behave reasonably well under the influence in order to be allowed to remain on licensed premises.

The licensee would also have a duty to ensure that individuals who were demonstrably drunk could not be served more alcohol. This could lead to an improvement in the attitude of young people to alcohol. It is also suggested in the Green Paper responses¹⁵ that it would lead to a reduction in street drinking.

It must be recognised that such a change would represent significant alteration in the rights of a sizable minority of the population, and could lead to complications in terms of operation and enforcement, as well as constituting a departure from the generally established principle of connecting the legitimate acquisition and use of alcohol from the age of majority.

It is likely that the practical operation of a division in the purchasing age would be problematic, as would the distinction between the permitted age of consumption and the permitted age of purchase. If an individual of 18 acquired alcohol, by whatever means, it would then still be legitimate for them to consume it.

¹¹ Smoking, drinking and drug use among young people in England 2010, Health and Social Care Information Centre.

¹² Health Profile for Jersey 2010

¹³ Licensing Law Green Paper 2009; AMOS Group; Palladium; BII; Youth Service; Police; St. John; St. Martin; Trinity; Alcohol Liaison Officer; Solicitor General

¹⁴ Licensing Law Green Paper 2009; Q26

¹⁵ Connétables, and the HSS Alcohol Liaison Officer

Enforcement could also pose difficulties, especially in situations where a premises was licensed for both on and off-sales. Arguably, the problem of alcohol ‘trickling down’ to underage drinkers would not be resolved, as this already takes place outside of the law. Also, it has been suggested that the current problem of under 18s obtaining alcohol is a result of a minority of retailers either knowingly or negligently selling to underage drinkers, and so the solution would be found in improved enforcement and not changes in people’s rights.

Lastly, the transitional provisions around such a change could be problematic, as without some interim system at the time of transition, 18-21 year olds would have their then-existing rights to purchase and carry away alcohol removed overnight.

Few jurisdictions make a distinction between the age at which alcohol can be purchased from on- and off-licences, so it is not a widely utilised consumption control mechanism¹⁶. On balance, it is not considered appropriate to change the statutory minimum age for off-sales of alcohol.

6. Licence number limitations

The concept of limiting alcohol licences, particularly new off-licences, by absolute limitation on licence numbers or by a policy of restriction on licence density, has been discussed in detail as a part of the policy development process.

Arguments have been made that the density of alcohol outlets is a causal factor in determining the amount of alcohol consumption across the population. Given the commitment of the health authorities in Jersey to reducing the total consumption of alcohol, it is understandable that those authorities wish to limit the number of alcohol licences.

These arguments are based on sound principles, as it appears from work conducted in several jurisdictions that there is a link between the density of licensed premises and the consumption of alcohol¹⁷.

¹⁶ International Center for Alcohol Policies (trade body) collated information from World Health Organisation, *Global Status Report on Alcohol and Health*, (2004), Geneva.

Of the 119 reporting jurisdictions, 6 had a higher minimum age of ‘serving or selling’ alcohol from off-licences than on-licences (Cameroon, Jamaica, Kazakhstan, Morocco, Swaziland and Sweden). Conversely, 5 had a *lower* age in respect of off-licenses than on-licenses.

¹⁷ This case is made by numerous studies, amongst them –

Kypri, K. et al, ‘*Alcohol outlet density and university student drinking: a national study*’ (2008), School of Medicine and Public Health, University of Newcastle, Australia, and;

Pereira, G. et al ‘*Access to Alcohol Outlets, Alcohol Consumption and Mental Health*’ (2013), PLoS One, online

In order to limit alcohol consumption a system of density management was proposed based on the control of licence numbers in key areas identified as being 'over-licensed'. As conceived, this would necessitate permitted licences to be withdrawn were an area to experience problems with drunkenness, or if an over-concentration of alcohol licences was deemed to be damaging to public health.

This approach was considered, but found to be ultimately unworkable due to its reliance on the withdrawal of alcohol licences from businesses that had not themselves broken any law or been individually responsible for any quantifiable social harm. For instance, under a licence limitation scheme, if an area was found to be over-licensed and if this was deemed to be detrimental to the public good, one or more alcohol licences would have to be withdrawn to rectify the situation.

The question becomes – if all businesses selling alcohol in the area are acting reasonably and legally, who loses their licence? The inability to fairly answer that question, together with the potential legal difficulties that arise from the reasonable expectation of a licence holder to continue to operate a business, are felt to weigh heavily against the introduction of any form of 'cap' or geographical limitation of existing licences.

A revised system was considered, which would apply limitations to the approval of new alcohol licences on either a geographical or absolute basis. This would remove the potential issue with withdrawing alcohol licence from existing operators and was considered to be a more workable and measured system.

Concerns existed as to the potential unintended consequences of such a system, indeed the States Economics Unit concluded that the licence limitation approach could introduce unintended economic effects. The potential negative effects of introducing such a scheme were summarised as follows-

“There will be economic costs associated with the proposed intervention of preventing new licences in certain areas because it will restrict competition. In particular-

- *Inefficiencies would be introduced because market forces would no longer operate and land use would be less efficient than would otherwise be the case. This could prevent change and regeneration in town, undermining economic growth.*

- *Creating a value for existing alcohol licences could mean that businesses that would otherwise leave the market remain in business because of the value of the licence as an asset. This could have the perverse outcome of actually increasing the number of licences (and therefore density) relative to what might otherwise have been the case.*
- *Making the market less responsive to consumer tastes. For example, if preferences were away from high density pubs to lower density café/bars the market would be prevented from adjusting in this manner. In general consumer choice and customer service may suffer as a result.*
- *The sale and supply of alcohol would become a higher margin activity which creates incentives to increase supply within the rules of existing licences.*
- *Where licences become scarce, consumers may pay higher prices for alcohol increasing profits for suppliers. This may mean that some of the profits are absorbed by the suppliers and that some is capitalised in the value of existing licences. If higher prices are the real objective of the proposed policy then there are more effective ways of increasing prices”.¹⁸*
- *It must be emphasised that all parties involved in the development of the new licensing legislation appreciate the need to incorporate legitimate concerns regarding public health, but the difficulty lies in establishing a mechanism which limits harm, is workable and not unduly onerous, and which will function as intended.*

In its analysis of licence imitations, the Economics Unit raised the key point that-

“While the proposal from Health¹⁹ focuses on the quantity of licences, it might be worth exploring issues around quality – in terms of who gets a licence to see if that would be more effective at achieving the objectives.”²⁰

¹⁸ States of Jersey Economics Unit, ‘Alcohol Strategy: assessing the economic impact of restricting new alcohol licences in Jersey’, (2011), States of Jersey, p2 (1.1.6)

¹⁹ Health refers to the Health and Social Services Department

²⁰ Ibid, p18 (5.2.3)

The Economic Development Minister's position is that it is indeed the quality rather than absolute quantity of licensed premises that will determine Jersey's relationship with alcohol.

It has been difficult to establish to the satisfaction of all concerned that the most significant driver of alcohol consumption in Jersey is the number or density of licensed premises, given that the studies supporting the density argument tend to find that the absolute numbers of alcohol outlets are a secondary factor, and that other variables such as the cost of alcohol have more significant effects²¹²².

Accordingly, the Economic Development Minister does not feel it is appropriate at this time to introduce any method of limitation of licence numbers. However, given the difference of opinion in this area, the Minister is supportive of further research being carried out by the Alcohol and Licensing Policy Group.

7. Licence duration

The one-year duration of the current alcohol licence has been raised as an issue by several stakeholders, for differing reasons.

Industry stakeholders have objected to the current one-year duration of the licence on the grounds that most jurisdictions allow longer licence periods, which reduces administration and costs to the operator. A longer licensing period would therefore be supported by the industry on the grounds of simplicity and manageability.

The States Fire and Rescue Service has raised the issue that once a licence is granted, its involvement with the continuation of that licence is limited, as the annual renewal is an administrative process which simply requires the licence holder to confirm that they wish to renew²³.

It has been suggested that a longer licensing period would permit a more rigorous consideration of existing licences at the point of renewal, and allow government to make a more effective determination of current licences.

Rather than an automatic annual renewal, discussions were held about the prospect of granting operators five-year licences, at the end of which there would be a process more akin to a re-

²¹ Anderson P, Chisolm D, Fuhr D, 'Alcohol and Global Health 2'; World Health Organisation

²² Wagenaar AC, Salois MJ, Komor KA, 'Effects of beverage alcohol price and tax levels on drinking'; University of Florida

²³ As detailed in the Licensing (Jersey) Law 1974, Article 10

application than a renewal. It was envisaged that this would involve representations from the police and fire service in the same manner as an initial application, and issues concerning the previous operation of the licence could be addressed at this time.

The intention was that this reconsideration would act as a point of engagement to allow the services to maintain contact with existing licences. It would be an opportunity to ensure that fire safety measures were up to date and maintained, and would act as a powerful incentive to encourage good behaviour amongst licensees.

This proposal was not accepted by the Licensing Assembly, which felt that the need to undertake detailed consideration of each licence on a five-year timescale would unduly increase the workload of the Jurats. Additionally, industry stakeholders raised concerns in respect of the five-year reconsideration concept, on the grounds that it would introduce a lack of certainty to operators who may have made significant investments in their premises.

It was suggested that there could be an unwillingness to invest in the industry if no guarantee can be given that a licence, once granted, will allow trading for more than five years. This would not help to enhance the quality of license premises.

In light of the difficulties raised in respect of the five-year licence system, an alternative system will be instituted under which licences would run indefinitely once granted, but which would include provisions to allow reconsideration of a licence at the request of interested parties including the police and fire and rescue service. This retains most of the benefit of the regular re-evaluation system by allowing concerned services to trigger reconsideration of a licence, and would be similar to the system operated in the UK²⁴.

8. Personal licences and premises licences

The development of a system of personal licences has been supported by both governmental and industry stakeholders²⁵. This would be similar in concept to what is currently operating in the UK, in that premises selling alcohol and persons managing such premises would be licensed separately, and both types of licence would have to be in place for alcohol to be sold.

²⁴ UK Licensing Act 2003 Section 51-53B. Also see - Department for Culture, Media and Sport 'Guidance for Interested Parties: Applying for a Review'

²⁵ 65% of all Green Paper respondents were in favour, 4% (1) was not in favour (Palladium Group) and the rest made no comment.

Under the current system, one individual is identified in the licence for a licensed premises, this places a considerable burden on the licensee, and requires an administrative process if the licensee moves from one premises to the other.

The proposed system would see licences granted to a particular premises, which would operate in much the same way as under the current system alongside a licence held separately by the manager.

The personal licence would be granted to individuals who fulfil criteria of a similar nature to those stipulated in the UK under Part 6 of the 2003 Act²⁶. The personal licence would be peculiar to the manager and would be portable as and when they changed employment or establishment, in a similar manner to the personal licence under the UK Licensing Act 2003²⁷ (UKLA). The licence would be entirely relevant to the individual, and not be directly connected to any premises. It would be subject to approval by the police and Licensing Assembly, and personal licences would be recorded on a central, publicly-available register.

The personal licence holder would not have to be on the premises when alcohol is sold as this would not always be practical. However, it is important that the personal licence holder is able to demonstrate that they took all reasonable precautions in their absence to ensure that the premises operated within the law.

Guidance would be given to ensure that the personal licence holder understood what measures were deemed as reasonable precautions and ultimately this should reduce the administrative burden currently placed on the Connétable of the parish.

One notable benefit is that the conduct of a licensee can be tracked separately from the operation of premises. Another advantage that has been identified by operators is that the personal licence could be developed to allow people and companies to provide limited amounts of alcohol at locations not usually used for licensable activities without having to extend the licence assigned to some premises. This could include people such as outside caterers who wish to provide wine with a meal, or small businesses or societies which sell alcohol products at events such as fêtes.

The personal licence should also simplify the administration behind the licensing system. By allowing a person to manage any premises with a valid premises licence, it removes any need for repeated vetting of managers, as a licensee would be vetted on entry to the scheme and their conduct from that point on would be recorded.

²⁶ Home Office; Amended Guidance issued under Section 182 of the Licensing Act 2003 (2012); Section 4.4

²⁷ Home Office Amended Guidance Issued under Section 182 of the Licensing Act 2003, Section 4.14

It is envisaged that all relevant stakeholders would have an opportunity to scrutinise and if necessary object to applications for personal licences in the same manner as premises licences. This personal licence would be subject to periodic review. The UKLA allows such licences to run for 10 years, but there may be administrative reasons for advocating a shorter term.

These proposals represent a significant change to the current system of licensing that could result in resource implications and are therefore subject to further discussion with the Licensing Assembly, (although the Assembly has agreed with the concept in principle). Also, the proposal to centrally hold a list of personal licensees may also bring with it resource implications and a suitable administering body will have to be found.

Nevertheless, the introduction of a system of separate personal and premises licences would offer considerable advantages (subject to clarification of any potential resource implications), including:

- Improved accountability: Premises licences to be held by the company secretary or chief executive, eradicating the current anomaly whereby responsibility for the proper management of the premises falls on the licensee, even though that person is an employee of the company.
- Central register: The creation of a central register for personal licence holders will allow greater transparency and control.
- Portability: Personal licences would be retained by the individual allowing movement between premises (and special events) without need for further application and consequential cost and time implications.
- Education: The introduction of a qualification in order to attain a personal licence brings with it the opportunity to train & educate candidates with regard to the law, the licensing objectives & generally raise awareness of the key issues surrounding alcohol sales.

9. Licence application process - cost recovery for statutory consultees

Currently, the police and fire services are involved in the consideration of licence applications. Under new legislation, these services will remain key contributors to the licensing process. It is also probable that the police will see an increase in their overall level of input, with a consequent likely expenditure of resources.

It is not reasonable to expect these services to undertake additional work towards new and enhanced licensing objectives without establishing some mechanism by which they can recoup the costs of their efforts. The fire service has suggested that the amount of work conducted in respect

of licensed premises is considerable, and that this represents a measurable cost to the services which they would ideally seek to recoup through some 'user pays' mechanism.

If the involvement of the police is increased, then it is likely that those organisations would equally be interested in the prospect of cost recovery.

Such cost recovery mechanisms would of course constitute a further burden on licence holders, and the appropriateness of further charges on the alcohol industry would no doubt be challenged by operators.

It is certainly the case that the licensed trade is already subject to a licence fee, and sells a product that is itself subject to a considerable degree of taxation. On-licences in particular bear additional costs such as door staff and security arrangements that most retailers are not subjected to. The argument has also been made that licensed premises are not unique in terms of requiring government regulation, and that cost recovery mechanisms should not be applied to a single industry in isolation.

While these points are appreciated, it must also be acknowledged that the alcohol industry is in a singular position in that it is permitted to profit from a product that is generally proscribed from sale, and that the intoxicant effects of its product result in costs to government, both administrative and operational, that other industries do not generate. Part of the administrative cost to the police and fire services is the time spent by those services in considering and advising upon applications, and working with applicants as necessary.

Currently these costs are absorbed by the services, which essentially means that they are met out of general taxation. Although costs incurred by other industries are met in the same way, it has been argued that the requirements of the licensed trade are greater than other sectors, and furthermore that there are secondary effects from the presence of the alcohol industry that have significant resource implications for the police service in particular.

While there is no intention to try and recoup the expenditure on immediate and long-term healthcare costs or the additional policing made necessary caused by alcohol consumption, it must be recognised that these exist and so in overall terms the profitable operation of the alcohol industry is not without its societal costs.

On balance therefore it seems appropriate to institute some form of cost recovery mechanism for the services which will be involved in the licensing process under new legislation. Including

provision for cost recovery in new legislation would seem to be relatively simple, with the following suggested mechanism.

Under the proposed scheme, applicants would be required, as part of the application process, to obtain reports from the various services detailing the assessed impact of the licence. The police would address any public order concerns and the fire service would detail the work to be conducted to make the premises suitable for use.

The applicant would be responsible for obtaining the reports, and the new legislation would allow the services to charge a fee equal to the cost of producing the reports, based upon a breakdown of resources expended on the work (which it is anticipated will be mostly or wholly staff time). This would help to ensure that the system was transparent and to assuage any concerns on the part of the applicant that services were either deriving revenue from the system or artificially increasing the cost of licences.

Some 'cap' on the cost of the reports would be required in order to assuage the concerns of licensees, and this would be set following further discussion with the services concerned.

It is hoped that once such a system had been operating for a time, the services would be able to refer back to reports previously provided to applicants, which would serve to lessen the cost of future work. Also, if a service had no concerns about a premises operating under a new licence then a simple statement to that effect could replace the report. This would help to minimise the costs to applicants.

It is likely that the mechanism outlined above would impose a relatively 'flat' cost on new applicants (although this is not certain), which would not be strictly in keeping with the planned graduation of fees. However, the benefits in governance derived from the statutory involvement of the services with licence applications and renewals would seem to be significant, and this mechanism would make provision for such involvement without imposing further resource implications on those services.

10. Licence application process - Fire and Rescue Service involvement

Under the current system, the Fire and Rescue Service is significantly involved in licence applications, and the current 1974 law requires that "*Any [liquor licence] application shall be accompanied by plans of the premises and evidence that such consents for the construction or adaptation of the premises as may be required under any enactment have been obtained, and copies of such plans and such evidence shall be sent to the Chief Architect of the States, the Chief*

Fire Officer and the Chief Public Health Inspector, who shall cause reports thereon to be prepared and sent to the Judicial Greffier.”²⁸

Given the nature of operation of on-licence premises (crowded environments concentrating individuals who may have impaired judgement) the consequences of a major incident could be severe. For this reason the requirements placed upon on-licences are relatively high, and indeed the maximum permitted occupancy for on-licensed premises is a function of fire safety considerations.

The fire service lacks, however, a legislative mechanism which requires on-licences to keep their premises up to the latest fire prevention standard. While the fire service is mandatorily involved with applications and approvals of licences, annual licence renewals do not require further consideration in fire safety terms, and so there is no automatic point of engagement with the fire service on an on-going basis, and this could result in premises with long-standing licences operating to different standards than those with more recently awarded licences.

It would seem reasonable to make provision in the new law for the fire service to have more powers if they ‘have reason to believe’ an establishment is presenting a significant health and safety risk to the general public. The fire service, if appropriate, would propose improvements to the licensee who would be given a ‘grace period’ in which to implement such changes. If the licensee did not implement these changes in the given time-frame, then this may trigger a recommendation for licence review by the Licensing Assembly under the grounds of contravention of ‘securing public safety’ in the licensing objectives.

Additionally, as the intention is to limit the extent of licences to the areas used for the purpose of selling and consuming alcohol, provision will need to be made to ensure that the fire service has the right to inspect and make recommendations with regard to safety within all areas of the building under which the licence is held, not just the area defined as the licensed premises.

11. Licence application process - police service involvement

Under the current licensing legislation, the Fire and Rescue Service is statutorily informed of applications for alcohol licences, as well as the outcome of parish assemblies and grants of provisional licences. The fire service is also required to inspect all premises which apply for a licence.

²⁸ Licensing (Jersey) Law 1974, Article 7, 8 Provisional grant of license

In comparison, the level of involvement of the States Police in licence applications is minimal. There is no statutory requirement to inform the police of licence applications and representatives of the police do not have the automatic right to be heard by the Licensing Assembly. Currently a non-legislative agreement has been established between the Judicial Greffe and the police licensing unit in respect of licence determinations, but this is not a statutory right to involvement.

Under the UKLA, the relevant police force has the statutory right to object to an application for a premises licence as follows:

“(9) The requirements [for the approval of a licence] are that the representations—

- (a) were made by a chief officer of police for a police area in which the premises are situated, and*
- (b) include a statement that, due to the exceptional circumstances of the case, he is satisfied that the designation of the person concerned as the premises supervisor under the premises licence would undermine the crime prevention objective.²⁹*

Given that the police force is responsible for addressing drunken disorder, and therefore could be greatly affected by the establishment of new licensed premises, this would seem like a sensible inclusion in any new licensing legislation.

In addition, there seems to be no reason not to go further and fully duplicate the current notification and involvement arrangements for the fire service as outlined in Section 10. This would only require that the notifications were copied to the police, and so would not be a resource intensive requirement.

12. Door staff accreditation

The consensus of the Green Paper suggests that the majority of stakeholders (60%) would support the introduction of a compulsory system for registration of door staff.

Currently a local scheme for accreditation exists and some (but not all) licensees are required by conditions upon their licence to employ such accredited staff.

²⁹ UK Licensing Act 2003 Article 18 (9)

The provision of professional and accredited door staff is seen as an important element of good practice as they are the most immediately public-facing members of licensed staff, and represent an extension of the licensee in terms of the licensee's responsibility to manage entry.

Several stakeholders have spoken against the concept of further regulation, on the grounds that the system would be hard to manage, increase bureaucracy and that it would impose a further cost upon the industry. They argue that the licensee should be responsible for employing suitable and qualified door staff in what is an already relatively limited market.

Additionally, under the current system of local accreditation operators could come to rely on a single accreditor, and in the event of the service provider ceasing to operate for any reason, licence holders might find themselves unable to obtain qualified staff and thus unable to comply with the conditions of their licence.

Under the terms of the UK's Private Security Industry Act 2001³⁰, door staff in the UK fall within the 'private security industry', and the regulation of that industry is managed by the UK Security Industry Authority (SIA), an independent body which reports to the UK Home Secretary. The objective is to ensure that private security operatives are 'fit and proper' persons who are properly trained and qualified to do their job.

Consideration has been given to the possibility of connecting the local accreditation scheme to that of the UK. This would have the advantage of allowing a degree of transferability between the Island and the UK, and would ensure that the administrative burden of an accreditation scheme did not end up with the States.

The argument in principle for and against this requirement is broadly similar to that for mandatory licensee training, in that it would be likely to increase the overall professionalism and accountability of local door staff but would constitute a burden on those staff and on licensees.

Challenges exist in practical terms, not least the considerable legislative differences between the UK and Jersey. There are also cost concerns, as it appears that the SIA accreditation is more expensive to obtain than accreditation available locally. It seems likely that a local register would have to be maintained, as the training could not simply mirror the UK (due to legislative differences) and that training would have to be made available locally.

³⁰ Private Security Industry Act, Schedule 2, Part 2, Section 8

Having consulted with the police and fire service, a reasonable compromise may be to introduce the requirement to have accredited door staff as part of increased security conditions associated with being eligible to hold a category E (nightclub) licence. This would ensure that the establishments which open latest and generally have the greatest propensity for generating intervention by the police, fire and health services, have trained and accredited security provision on-site. This would however increase the burden on category E licence holders because of the additional costs and administration which would be incurred.

The fire service has also suggested that any door-staff accreditation should if possible include elements of fire safety training. They expressed concern that some door-staff may not fully appreciate the relevant evacuation procedures or the potential consequences of a fire in some of the larger licensed establishments.

A requirement for utilisation of accredited security staff for special events could also be part of any operational conditions imposed by the Bailiff when the application is heard (see Section 22).

Local authorities and the police in the UK work on the ratio of at least 1 SIA-trained security person to every 75 participants, thus it would seem logical to advocate the adoption of a similar ratio in Jersey.

13. Young people in licensed premises

The current Licensing Law permits young people to remain on licensed premises 'in a room with public bar' only until 9pm, if accompanied by an adult and in a 'suitable environment', and for accompanied persons under 18 to be served alcohol with a meal.³¹

There is general agreement amongst stakeholders³² that young people should be able to remain in licensed premises after 9pm in certain situations, for instance if they are having a meal with their parents. This is seen by the industry as a positive step, especially from a tourism perspective and also more acceptable from a health perspective due to these now being non-smoking environments.

The limited and supervised introduction to alcohol in a relatively controlled environment may meet licensing objectives by allowing young people to better understand alcohol and its effects. The key is to ensure that the environment is suitable and that police have appropriate powers to intervene if necessary. The test of what is a 'suitable environment' would remain with the Licensing Assembly.

³¹ Licensing (Jersey) Law 1974 Articles 12 (1) and 13 (4)

³² 74% of the respondents to the Licensing Law Green Paper

On this basis it would seem sensible to introduce flexibility into the control over the access of young people to licenced premises. Category A premises (pubs) are primarily drinking establishments but can have a 'family friendly' atmosphere, especially on social occasions, etc. It would seem sensible to retain the 9pm time limit on these premises, as this is the established position.

Category B premises (hotels) may have a bar in a lounge room, and it would seem reasonable to allow resident young people to remain on those premises until the bar closing time (11.00pm). Once the bar is closed they can of course remain on the premise as residents.

Similarly, category C (restaurants) may have a bar in the same room as the dining area, and the presence of that bar should not in itself restrict access by young people. Young people should be permitted to remain on restaurant premises until closing time (1.00am).

Category D premises (private clubs) are slightly different in that they are more akin to private pubs than hotels or restaurants. Nevertheless, the new legislation will maintain the current requirement that the provision of alcohol be secondary to the actual purpose of the club, so it would seem acceptable to allow members under 18 to remain on the premises during the hours of operation.

Category E premises (nightclubs) are not a suitable venue for young people, and so no-one under the age of 18 should be permitted to be on those premises. To ensure that there can still be provision for 'under 18' entertainment in nightclubs, the condition requiring young people be excluded could be varied at time or on days where no alcohol was being sold on the premises.

The general exclusion of under 18s from nightclubs has the benefit of ensuring that the police are able to act if they find underage people in nightclubs who are not drinking at that particular moment, which would resolve a problem that has been raised as a matter of concern.

Category F premises (places of entertainment) in which a bar is present in the room where entertainment is being held (and given that the provision of dancing etc. with alcohol is now a separate category), children should be able to remain until closing time (1.00am at the latest).

14. Opening hours

The permitted opening hours of licensed premises is a highly contentious issue which tends to provoke considerable debate. Evidence from the UK suggests that the UKLA's effective removal of statutory controls on closing times has not generated the more relaxed drinking culture that had

been anticipated, and indeed that there has been limited use of very late licences (a total of 7,109 premises were licensed for the 24 hour sale or supply of alcohol in the UK in 2012, representing only 4% of all licensed premises).³³

The Green Paper did not directly address closing times, although 'drinking-up time' was mentioned. Operators have not pushed hard for an extension of licensed hours, although it is natural that some would be interested in increasing profitability by trading for longer.

The police have indicated that clearing intoxicated people from town at a reasonable time is an important objective in terms of maintaining public order, and it is unlikely that they would support an overall increase in the licensed hours.

Staggered closing times for on-licences has been discussed, and indeed one of the potential benefits of the UKLA was that it would avoid simultaneous closing of premises putting a significant number of drinkers onto the streets at the same time. Reports in relation to this in the UK suggest *that "there is no clear picture of whether alcohol related demands on A&E services and alcohol-related admissions have risen, some hospitals have seen a fall in demand, others have reported an increase"*³⁴

In Jersey, there are acknowledged difficulties with the concept, as even if the licence system were designed in such a way as to facilitate it, such a system could be difficult to manage in practice and could result in significant commercial impacts on operators.

In order to 'stagger' closing times, similar businesses would have to be treated differently, with some being required to close at (for example) 10.30pm, some at 11pm and some at 11.30pm, with some provision being made for 'drinking-up time'. There might well be strong commercial pressure to be the 'last one closing', and the fact cannot be avoided that some licensed premises would be losing out to others by limitations imposed on the service that they could offer.

Recently, there have been calls for an extension of licensed hours to permit special events to take place, and to attract entertainment to the Island. The suggestion is that the 2.00am closing time does not allow sufficient commercial opportunity to justify booking top quality (and therefore expensive) entertainment such as visiting D.J.s etc, and that occasional special arrangements should be made to allow extended opening hours on request.

³³ Home Office; Alcohol & Late Night Refreshment Licensing: Statistical News Release (2012); Section 5

³⁴ UK Govt. Written ministerial statement by Andy Burnham on the Evaluation of the impact of the Licensing Act 2003, March 2008

This is not primarily to do with the general hours of operation, but rather the arrangements for licence extension. Under the current legislation, the authority to extend a licence rests with the Bailiff³⁵, and the new legislation will maintain that arrangement. In order to ensure that decisions in this area are in keeping with the licensing objectives, the Alcohol and Licensing Policy Group may wish to draft a policy on the extension of licences for clarity.

Whilst it is acknowledged that there are difficulties involved with variable closing times - and that the 2009 Green Paper consultation did not highlight dissatisfaction with the current arrangements - the Alcohol and Policy Licensing group will undertake a review of options related to the possible introduction of extended hours, including to allow for the sale of non-alcoholic drinks and food.

15. Police powers of closure

Currently the police maintain public order in respect of licensed premises primarily through general public order legislation. In the UK, legislation empowers police officers to deal specifically with anti-social behaviour and potential public disorder resulting from the operation of licensed premises.

The UKLA grants powers to the police to issue a 'closure order' on licensed premises for up to 24 hours on the authority of a police Inspector (or higher rank) if he or she 'reasonably believes' that disorder is likely to occur, or if noise and disturbance is causing a public nuisance³⁶. This period can be extended by the relevant magistrate's court until specified conditions are met.

The UKLA makes provision for the premises' licence to be reconsidered by the licensing authority if a Magistrate's Court invokes its powers under the Act.³⁷ The licence can then be modified or revoked by the court as necessary.

The Police Force has expressed a desire to see some of the comparable UK statutes recreated in local legislation. In particular the ability of the police to close disorderly premises without initially referring to the Licensing Assembly would allow public order to be better maintained. The review of these actions by a judicial body at the earliest opportunity would represent a 'check' upon the police to ensure that this power was not being used unnecessarily.

³⁵Licensing (Jersey) Law 1974, article 86, Part 13, 89 (1) (a) Special Permits

³⁶ UK Licensing Act 2003 Article 161 (1)

³⁷ UK Licensing Act 2003 Article 167 (1)(b)

It is envisaged that for the purposes of Jersey legislation only Police Inspectors would be empowered to authorise such a closure, to ensure that a clear line of accountability could be maintained.

The UKLA also contains powers which allow a police officer of the rank of Superintendent or higher to approach the relevant Magistrate's Court to obtain a closure notice for an 'area' if there are concerns that disorder might occur.³⁸

The application of this power in Jersey would result in a significant degree of disruption to the industry, and no incident has occurred in recent times that would justify its use. Extrapolating from the UKLA provisions to Jersey, one of the two Jersey Superintendents (probably the head of Uniformed Policing) would be empowered to approach a judicial body (presumably the Licensing Assembly in an exceptional session) to request that all licensed premises on a given street or in a designated area (i.e. the Weighbridge and surrounding streets) be closed for a specified duration.

Although it would clearly be disproportionate in the vast majority of situations, this might be a valuable power in certain 'worst-case' scenarios. It seems realistic to assume that the involvement of such high-ranking police officers would effectively require the involvement of the Home Affairs Minister (even if this was not a statutory requirement, which might in itself be wise), and this together with the need for judicial consideration of the request (by the Licensing Assembly in exceptional session headed by the Bailiff) should result in the use of this power only where the government of the Island has agreed that the threat is of sufficient magnitude to warrant such draconian measures.

It would therefore seem appropriate to provide the States Police with powers comparable to those available to police forces in the UK under the UKLA in respect of closing identified licensed premises, or groups of licensed premises in the most extreme cases. These powers would be subject to controls to ensure that they were operated in a transparent and reasonable manner, and should be a last resort for the police where all other options have failed.

In the UK, the exercise of this power in relation to a specified premises triggers an automatic review of that premises' licence. This reflects the seriousness of any situation that would require the police to exercise these powers. This review of the licence would take place as detailed in Section 2, and could result in withdrawal of a licence or the imposition of restrictive conditions.

³⁸ UK Licensing Act 2003 Article 160 (1)

16. Noise and disturbance

The Green Paper raised the possibility of using licence conditions to ensure that premises operating late at night had adequate soundproofing and other noise abatement mechanisms in place, as well as empowering the States Police more fully to regulate the noise emitted by licensed premises.

Separately, some licensees have expressed an interest in having more transparent and established rules in respect of noise generation so that they can moderate their own sound output without agencies becoming involved. They have suggested that a formula such as 'maximum of 'x' decibels at 'y' distance' be included in the law.

The police service has indicated that it would find it difficult to accommodate additional responsibilities in this field, and that it does not consider excess noise to be a criminal matter. It has suggested that the matter should remain with the Health and Social Services Department. It has also recommended that the potential of a licensed premises to generate noise should be an important consideration in deciding whether or not to grant an alcohol licence, especially in respect of late-opening premises.

The concept of a fixed maximum of noise generation forming part of either the licensing law itself, or the conditions of alcohol licences would seem to provide certainty to licensees at the cost of limiting flexibility within the system. It is not clear if such a system would be practical, given the complex and technical nature of sound propagation and the subjective nature of loudness and nuisance.

Accordingly, it does not seem practical at this time to involve the States Police in the prevention of excessive noise beyond their current responsibilities.

Discussions will continue in respect of developing specified noise maxima but the potentially insurmountable difficulties inherent in designing such a system should be acknowledged, as should the difficulties of incorporating such a system in primary legislation.

17. On and off-licence parity – drinks promotions

In principle, the concept of establishing the maximum practical parity between the requirements placed upon on and off licences has been suggested. Arguably this would be reasonable as off-licences currently have more lenient restrictions in terms of alcohol provision, but may be

responsible (anecdotally) for a significant proportion of drink-related problems in public and in domestic settings.

It is also argued (particularly by on-licence operators) that off-licences are responsible for some of the difficulties experienced by the on-licence trade, as some patrons attempt to reduce the cost of an night out by drinking alcohol acquired from off-licences at home before entering on-licensed premises.

The past 30 years has seen a shift in culture regarding alcohol consumption, one trend has been the increase in adults drinking at home having purchased alcohol via the off-trade. Studies show that the principal reasons concern convenience, these include cost, safety, social occasions, fear of under-age drinkers and child care.³⁹

Operators of on-licensed premises find themselves responsible not only for those who purchase alcohol but those who consume it. It has been argued that if a group of people are purchasing 'rounds' a licensee could find it difficult to ensure that alcohol was not being provided to an unsuitable person (i.e. an underage or drunk person), but nevertheless this would remain the licensee's responsibility. The on-licence is therefore expected to monitor the 'end-user' of alcohol as well as the persons to whom it is sold.

Off-licences are not (and realistically cannot) be subjected to this level of control, but there is an argument that some of the requirements placed upon on-licences could be fairly replicated in an off-licence setting. In particular, the current moratorium on drink promotions in on-licensed premises has been identified as a significant difference in treatment. It has been suggested that this might be extended to off-licences, and that this could have positive effects both in terms of reducing public disorder and reducing total alcohol consumption.

Such a measure could constitute an effective increase in the cost of alcohol, although it must be acknowledged that the absolute cost of alcohol could be maintained by retailers simply reducing overall prices rather than developing offers. It would however have the effect of reducing the use of alcohol as a potential loss-leader or discount product, as it is less likely that permanently maintained alcohol prices would result in prices as low as those available in time-limited offers.

The significant difference between on and off-licences is that alcohol products comprise only part of the business of most off-licences, which tend to be general retailers with an element of alcohol

³⁹ Foster J, Read D, Karunanithi S, Woodward V, 'Why do People Drink at Home', Greenwich University 2010

provision. This means that controlling the offers and promotions available to these retailers is more problematic as their business model is not built entirely on the provision of alcohol.

The imposition of controls on the offers of general retailers could have secondary effects, particularly in respect of store-wide discounts or broader offers over a range of products. There could equally be undesirable effects on loyalty and discount schemes in operation in some chain retailers.

If promotions and offers on alcohol were not to be permitted in general retailers, it would seem unreasonable to apply such restrictions to dedicated off-licences.

It is anticipated that this is an area in which the Alcohol and Licensing Policy Group will provide advice to the Licensing Assembly.

18. Pricing strategies

There is research evidence that shows that the amount of alcohol drunk by the population as a whole⁴⁰, as opposed to by particular groups in the population, is driven in part by price, availability and promotion. Or, to put it simply, the more outlets there are selling cheap alcohol, the more a population is likely to drink overall. The Alcohol and Licensing Policy Group will therefore be undertaking a review of three different areas of pricing strategy:

- **Equalisation of Impôt duty**

In Jersey, duty⁴¹ is calculated according to the type of alcoholic drink and to some extent its alcoholic strength. At present, the duty on spirits is much higher than other alcoholic drinks but there are examples where the duty is higher for lower strength alcoholic drinks than higher strength alcoholic drinks – an anomaly which has arisen over time.

Equalisation of duties would mean strengthening the link between duty and alcoholic content, as well as increasing the duty levels over time so that eventually the duty on a unit of alcohol is the same whether it is in beer, cider, wine and spirits.

Equalisation of Impôt duty, like minimum pricing (12.3 below), would potentially reduce total alcohol consumption. Negative unintended consequences could, however, also arise, such as a perverse incentive to drink spirits in preference to low alcohol drinks.

⁴⁰ Anderson.P, Baugman.B: 2006: Alcohol in Europe, A Public Health Perspective. A Report for the European Commission: Institute of Alcohol Studies

⁴¹ Impôts is French for tax or duty. By virtue of the Customs and Excise (Jersey) Law 1999 duty means any duty imposed by this Law on goods imported into, exported from or grown, produced or manufactured in the Bailiwick and includes both customs and excise duty.

- **Control of drinks promotions or pricing incentives (see section 17 above)**

Currently there is a moratorium on drinks promotions in licensed premises, although not in off-licence premises. This is in part because many off-licences are general retailers and the imposition of controls on price promotion for alcohol could potentially have unintended consequences on other store-wide discounts and food promotions.

That said, the Alcohol and Licensing Policy Group will undertake a review of pricing incentives in off-licences and the effect they have on consumption of alcohol including consideration of the advice issued by a former H.M. Solicitor General regarding drinks pricing in licensed establishments, and the impact of this advice on the licensed trade.

This work is to be undertaken in light of national survey data that shows a change in drinking patterns, with increased drinking at home and away from drinking in licensed premises.

Whilst there is no local survey data about the extent of this trend in Jersey, anecdotal evidence suggests that it is also the case here. In particular concerns have been raised about young adults buying alcohol from off-licences to “pre-load” before they go out for the evening.

It is also known that since 2000, alcohol sold in off-licences has become more affordable, whereas on-licence alcohol has become less affordable over the same period. In addition, there are higher numbers licensed premises in Jersey when compared to the England - 2.2 times more off-licences and 2.1 times on on-licences in Jersey than England⁴² based on population - making alcohol more readily available for purchase.

- **Minimum pricing review**

Minimum price is a mechanism that can be used by governments to set the price of alcohol at a level that would potentially deter over-consumption. Under a minimum pricing scheme, retailers would be legally required to ensure the amount they charge for the alcoholic drink is set above the minimum price. The stronger the alcohol content of drink, the more units that are in it, the higher the minimum price for that drink.

⁴² Source: South West Public Health Observatory, 2008

Some industry stakeholders have expressed concern that a minimum price would unequally and unfairly affect sensible drinking. However the latest research has suggested that consumption amongst low income and higher income moderate drinkers respectively would fall by just 3.5 and 1.0 units per year. This compares with 297.0 units for low income harmful drinkers and 85.2 units for higher income harmful drinkers.⁴³

The Scottish Government has made a commitment to introduce a minimum price per unit of alcohol, however the introduction of the scheme is held up in the European Courts. In the meantime, the Government in England & Wales has stalled a decision on minimum pricing.

The Alcohol and Licensing Policy Group's review of minimum pricing would not commence until after the legal position on introducing it is made clear through the European courts.

19. Fees

The intention is to continue to drive fees from the licence system at the same overall level, adjusted for inflation since uplifting ceased in 2007.

20. Qualifications and accreditation for licensees and staff

Several key stakeholders have indicated that they would be in favour of the introduction of an industry standard accreditation scheme for managers and representatives of licensed premises.

This is a requirement under the UKLA for persons applying for a personal licence.⁴⁴ There are three awarding bodies in the UK which offer similar courses which meet the specifications set by the Department for Culture, Media and Sport (DCMS). Typically, the training covers topics including the nature of personal licences and responsibilities of holders, the nature of premises licences, the operation of licensing authorities, the powers of the police, permitted and forbidden activities, disorderly conduct, the protection of children and the rights of entry to premises. It also gives an overview of the legislation in the area.

Many of these courses are advertised as one-day events with single examination assessments. The cost is approximately £150-200, and many businesses in the UK seem to arrange such training for all staff involved in the provision of alcohol, not just licence holders. The short duration of the courses suggests that they are not particularly onerous.

⁴³ University of Sheffield. 2013. *Modelled income group-specific impacts of alcohol minimum unit pricing in England 2014/15*:

⁴⁴ UK Licensing Act 2003; Part 6; Section 120 (8)

Requiring such training in Jersey would be likely to benefit the industry in terms of improving professionalism and increasing understanding of licensing issues amongst operators. It may prove especially beneficial given that new legislation will be in place, as it would help to ensure that licensees are aware of the changes to the licensing regime and the requirements of the new law.

It is not however a simple matter to create such a training scheme for Jersey. The legislative background in Jersey differs from the UK, and so even if new licensing legislation were to incorporate some elements similar to those in the UKLA, it would still not be possible to use the UK training schemes in Jersey without some modification.

Informal discussions have been held with UK training providers to gauge their opinion on the matter, and the general reaction has been positive. One company has indicated that some local licensees currently take the UK training course with a 'Jersey-specific' addendum. Highlands College has also been involved in providing such training in the past.

It is not possible to enter into detailed discussions with the training providers until the parameters of the new licensing law have been mapped out, as no sensible discussion can take place without knowing what training they will be asked to provide. However, the positive responses to date indicate that there is a high likelihood that some arrangement could be reached.

In the UK, the requirement for staff training applies to both on and off-licences, as a personal licence would be needed to manage either type of premises. If Jersey adopts the personal licence system it would follow that local off-licensed establishments, even those small shops which sell limited amounts of alcohol, would need a designated person to hold a personal licence.

It is recognised that the effect of mandatory training on small off-licence retailers (in particular on corner shops which may have only a few square feet of alcohol sale space) might be significant, and this measure could reflect another 'flat' cost effect across the industry. This will have to be managed carefully to avoid a disproportionate burden of costs falling upon small businesses.

Subject to the caveats above, the new legislation will contain provisions making appropriate training a requirement for the grant of a personal licence.

21. Temporary licences

Currently, the Licensing Assembly can issue a licence to a premises on the understanding that certain action will be taken in due course, in particular that fire safety arrangements will be made. This allows the operator to trade while improvements are made, and is highly desirable from the perspective of licensees. It has been suggested that were this facility not to be available it is possible that some premises might fail in the opening stage of operations.

Concerns have been raised that this allows premises to trade without being fully compliant in some areas, and that the removal of an alcohol licence from an operator which did not eventually comply with the improvement conditions could be difficult.

A temporary licence scheme would resolve this issue. An applicant who was not fully compliant with the new legislation in some aspect of its operation, for instance in its fire safety requirements, could be offered a temporary licence that self-expired at a date shortly after the next sitting of the Licensing Assembly. The assembly would at its next meeting consider the application of the premises for a full licence, and, if it was satisfied that the necessary works had been carried out, such a licence could be granted.

Alternatively, if the works had not been completed then the applicant could be refused. The temporary licence would then expire in due course with no further action from the Licensing Assembly required. This would allow operators to trade while they got their business underway, but would also act to ensure that operators were still bound to complete the necessary works, while avoiding the need to have the Licensing Assembly revoke a licence in the event of non-compliance.

It is envisaged that the temporary licence could be extended on demand if the Licensing Assembly considered that works had not been completed due to circumstances beyond the applicant's control.

The introduction of a temporary licence scheme is supported.

22. Business plan / operating schedules

As part of the Green Paper consultation it was suggested that operators be required to submit a business plan outlining what the applicant's business will do, and how it will do it. This has met with resistance from operators on the grounds of being unreasonable, as it is perceived that

business plans could contain commercially confidential information which should not be revealed for this purpose.

This is to a large degree an argument about semantics. Under the UKLA providers are expected to make available to the determining body an 'operating schedule' which outlines the intended operation of the business but does not contain detailed commercial operation.⁴⁵

Such a schedule would be a vehicle for applicants to demonstrate that they were operating in accordance with the 5 key licensing objectives, and also that they had met other proposed requirements under new legislation, such as staff training.

Given the need for the determining body to properly understand the business model behind a proposed alcohol licence, it is desirable that an operating schedule be provided for consideration during the licence application process.

23. Licensing for special events

Currently the law only allows the holder of an on-licence to apply to the Bailiff for a 'special permit'⁴⁶ which acts as an extension to their licence by granting them permission to sell alcohol at special occasions such as race meetings, sporting events, fêtes etc. Once granted, the licensee must then present the permit to the Connétable of the parish in which the event is to be held before alcohol can be sold.

In practice an event organiser who does not hold an on-licence needs to rely on the good will of an existing licence holder to apply for an extension before alcohol can be sold at a special event. This arrangement can be less than satisfactory as situations may arise whereby the licence holder has little or no control over alcohol sales for which they are directly responsible. Currently there is no requirement for the licensee to be present at such an event and ultimately what should be a highly regulated activity can lack the necessary oversight.

The current system is restrictive, open to abuse and makes no distinction between sizes and types of event.

In the UK special events are categorised by order of size-

Fewer than 500 people:

⁴⁵ UK Licensing Act 2003; Part 3; Section 17 (4)

⁴⁶ Licensing (Jersey) Law 1974, article 86, Part 13, 89 (1) (b) Special Permits

- In order to obtain a license for an event which is to accommodate fewer than 500 people (Permitted Temporary Event), an individual may apply for a 'Temporary Event Notice' (TEN).⁴⁷ The licensing authority grants permission by signing the notice and sending it back to the applicant, no further permission or authorisation is necessary.
- Someone who holds a Personal Licence is able to hold up to 50 temporary events a year at other premises that are not licensed. Non-Personal Licence holders are able to hold up to 5 temporary events a year. A Temporary Event Notice must be submitted to the Council before an event can be held, and the Police may object to it on crime and disorder grounds
- Once the individual is in possession of the TEN, a copy must be supplied to the relevant Chief of Police, thereby providing opportunity to object.
- Fees: £21.00 per application.

More than 500 people:

- In order to sell alcohol at an event hosting more than 500 people, a premises licence is required. As part of the application process an individual will need to be nominated as 'designated premises supervisor', this person will also be required to hold a valid personal licence.
- The provision of an Operating Schedule⁴⁸ is required as part of the premises application process.
- Fees: Based on non-domestic rateable value.

More than 5,000 people:

- A premises licence is required but note that as part of the application process it is likely that more scrutiny will be applied to the Operating Schedule.⁴⁹
- Fees: The licensing authority will charge an additional fee for exceptionally large events based on a sliding scale.

Whilst it is not necessary to replicate a system such as the one used in the UK due to the relative size and nature of events organised in Jersey, there are undoubtedly elements which could be utilised as part of a model to improve the current process.

One such element would be the introduction of a personal licence scheme for extra-ordinary special events (as detailed in section 4) which could allow individuals in possession of such a

⁴⁷ UK Licensing Act 2003; Part 5; Section 100

⁴⁸ UK Licensing Act 2003; Part 3; Section 17 (4)

⁴⁹ UK Licensing Act 2003; Part 3; Section 17 (4) (h)

licence to effectively license the entire special event premises to sell alcohol without 'extending' another establishments' licence. It would also allow individuals who are not in possession of an on-licence to apply for a personal licence and not rely on the goodwill of a current on-licence holder in order to be able to offer the sale of alcohol at any such event.

One of the requirements could be that the personal licence holder would need to be on-site at all times during the special event, this would be a function not dissimilar to that of the 'designated premises supervisor'⁵⁰ under the UKLA. This would encourage accountability and ensure that there was always an official available should they be required.

The personal licence holder would still have to apply to the Bailiff in order to gain permission to host an event. The parish in which the event was due to take place would also need to be notified. The Bailiff would ultimately decide whether an event is worthy of triggering further scrutiny (or potentially a premises licence application).

With regard to the definition of the premises when considering a special event, it would seem sensible to base it on area, bearing in mind that often such events are not restricted to buildings. This method would also allow consideration for the inclusion of such places where ancillary activities occur (toilets, camp sites etc.) which may form part of the licensed area by virtue of being accessed by people carrying drinks.

Fees: A flat fee for events not requiring health & safety reports.

As noted in section x, extensions to licences whereby only a later closing time is requested for an existing licensed premises would continue to be administered by the Bailiff as it is in under the current legislation.⁵¹

24. Transitional provisions

The proposed changes to the licensing system will improve the operation and accountability of the licensed sector in Jersey, but will impose an increased compliance burden on the industry. It is not considered feasible or fair to introduce the changes immediately, and so there will be a transitional stage after the introduction of new legislation but before it comes fully into effect.

It is anticipated that this will be a period of up to one year, during which time existing licences will operate according to the conditions on which they were granted.

⁵⁰ UK Licensing Act 2003; Part 3; Section 15

⁵¹ Licensing (Jersey) Law 1974, article 86, Part 13, 89 (1) (a) Special Permits

During the intermediate period, the application process will be revised and applications for new licences and variations arriving after a cut-off date will need to be submitted in the new format.

Existing licences will be transitioned across to the new licence categories without the need for a new application by the licence holder, save that in order to support the zonal licence scheme, businesses with more than one licence (with the exception of restaurants running public bars) will need to provide a plan of the premises indicating where the various licences will be in operation.

It is not anticipated that the Licensing Assembly will have to treat the clarification of licensed area as a reconsideration of these licences, as it will effectively have granted the relevant licences for the full area of operation already.

Appendix 1

List of Liquor Licensing Law Green Paper Consultation Respondents (2009)

No.	Name	Status
1.	Keith Shaw	Individual
2.	Martin Sayers	Night Club Association
3.	Roy Travert	Individual
4.	Bronia Lever	Brook in Jersey
5.	Mr & Mrs J Banks	Individual
6.	Ed Le Quesne	Amos Group
7.	Spencer Bourne	Palladium Group
8.	David Levitt	Individual
9.	Royal Court	Jurats
10.	Martin Barette	A C Gallie Ltd.
11.	Simon Le Cornu – Brown	British Institute of Innkeepers
12.	Mark Capern	Jersey Youth Service
13.	Jim Hopley	Co-operative Society
14.	D. Warcup	States of Jersey Police
15.	Ray Shead	Chamber of Commerce
16.		Liberation Group
17.	Stephen Smith	Health Protection Services
18.		States Treasury
19.	Gerald Fletcher	Jersey Hospitality Association
20.	Roy Le Herissier	Deputy
22a.		Comité des Connétables
22b.		Connétable of St. John
22c.	S A Yates	Connétable of St. Martin
22d.		Connétable of Trinity
22e.		Connétable of St. Lawrence
23a.		HSS Alcohol Liaison Officer
23b.	Michael Gafoor	Director, Alcohol & Drug Service
24.		Solicitor General
25.	Anonymous 1	Individual
26.	Anonymous 2	Individual