

4.2 MODERN CONTROLS FOR SHOPS, STORES AND SUPERMARKETS

Purchases for home consumption - General

22. Most alcohol is drunk at home and not on licensed premises. It is mostly bought

The “off-licence” market
About 50% of the adult population have drunk at home in the last seven days. 28 per cent of beer is consumed in the home compared with 15 per cent in 1985. The most common activity undertaken while consuming beer is watching television. The total “take home” market for alcoholic drinks is said to be worth about £7.6 billion. There are currently 45,000 off-licences renewable every three years, with about 1,000 new applications each year.

from around 45,000 retail outlets including, for example, supermarkets and the local High Street shop although there is a growing market in alcohol sold over the Internet for home delivery. The vast majority of these shops and stores do not give rise to the levels of disorder and public nuisance associated with pubs and other places where people gather together to drink alcohol socially. But they are not problem-free. Other than obtaining it at home, youngsters who want alcohol are most likely to try to buy it from such shops, either on their own or with the help of irresponsible adults. Local off-licences, particularly those more isolated on estates, can become a focus for young troublemakers. It is therefore important that such premises continue to be licensed, and that it is open to local residents or the police to act in the case of shops that are a persistent focus of criminal behaviour. So

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

Reducing under-aged purchase and consumption of alcohol

23. Appendix 2 explains the reasons for maintaining 18 as the minimum age for buying alcohol. To back this up we need to close loopholes in the present law. It is currently an offence for a “licensee or his servants” to sell alcohol to youngsters under that age, but because of this outdated wording, the offence does not cover all staff who serve customers at off-licences.² It is also a defence to show that the person selling alcohol has exercised “due diligence” in respect of customers’ ages. This is an uncertain test. A positive duty to confirm acceptable age would be clearer.

24. It would underline the importance of keeping alcohol out of the hands of children on their own. In practice this will mean that retailers would have to ask to see proof of age unless it is obvious or they know the customer. Action also needs to be taken to stop adults from buying alcohol on behalf of children who want to drink it on their own. This is deeply irresponsible but is currently permitted and should be prevented. There will therefore be a new law outlawing the purchase of alcohol for minors

² A Private Member’s Bill – the Licensing (Young Persons) Bill – currently before Parliament may close this loophole in the law. Measures to close the loophole should therefore only be necessary if the Bill fails.

where it is to be consumed outside the home³. It is not unknown for adults to be badgered into buying alcohol for children waiting near off-licences or, even worse, offering to buy it on commission from them. To complete the package of improved enforcement, it should be possible for responsible authorities to use children for “test purchases” of alcohol. This is a sensible back-up for controls on the sale of other goods, but in the case of alcohol its legality has been open to question.

25. We also need to ensure that the sale or supply of alcohol to children anywhere is properly covered by the law. The current licensing laws allow certain exemptions from the requirement for a licence, for example, a liquor licence is not required to sell alcohol from a train. But the relevant offences are almost exclusively tied to licensed premises. Accordingly, sales of alcohol to children travelling alone on a train are not unlawful. This all needs tightening up. We also know that sales of smuggled alcohol take place clandestinely and unlawfully in many different places. While such sales are unlawful, offenders should face additional penalties if they have targeted minors.
26. On the other hand, we do not judge it necessary to discourage all underage drinking at home. Research shows that the most common source of alcohol for children aged 12 – 15 years is their parents. Small amounts of alcohol consumed in the home, perhaps with a meal under family supervision, can be useful training for moderate and sensible consumption in later life. No doubt, there are some parents who set a poor example. The answer lies not in trying to penalise responsible families but through better education and guidance. But, save in the case of the family home or private homes where children are being supervised with parental consent, we need purchase and supply laws that are comprehensive.
27. We therefore propose:
 - ✓ making it an offence for *any person* (not just licence holders “and their servants” as now) to sell or supply alcohol to a person under 18 years of age⁴
 - ✓ extending the offence to *any place* (not just licensed premises) other than the family home or private residences where children are being supervised with their parents’ consent (it is not unknown for smuggled alcohol to be sold to children from private houses)
 - ✓ prohibiting sales to people buying on behalf of those under 18 years for consumption in a public place
 - ✓ setting “test purchasing” on a statutory footing
 - ✓ placing a positive duty on any person engaged in the retail of alcohol to be satisfied as to the age of the purchaser before making a sale
 - ✓ creating an offence of permitting the sale of alcohol to those under 18, so as to make clear the responsibility of the licence holder when sales are made on his or her behalf by staff.

³ A proposed amendment to the Licensing (Young Persons) Bill may also deal with this problem.

⁴ An exception to this scheme is described at paragraph 61 in connection with the sale of certain alcoholic drinks to 16 and 17 year olds for consumption with a table meal.

28. It is therefore essential that:

- ✓ traditional “off-licences” be subject to a requirement for a premises licence, and retailers require a personal licence. The details of both types of licence are described later in this White Paper.

Power to close off-licences for public order reasons

29. Since 1985, the law has afforded magistrates the power to make an order banning the sale or supply of alcohol in designated sports grounds at certain times, the taking of alcohol into the grounds and the transport of alcohol to games. For example, this can arise at the request of the police in connection with major football matches. The purpose is to enable improved crowd control and preserve public order. At present, the police can request local off-licences in the vicinity of sports grounds to close down when large crowds will be around, and usually shops comply voluntarily. But if one outlet does not co-operate the goodwill of others is of little value. Under existing law, local justices can only order the closure of licensed premises where a threat of “riot or tumult” exists, but this is a more severe test and rarely used.

30. We believe that there is a good case for the police to be empowered to seek a *temporary prevention of sale order* from a local magistrate that would require shops in a specified geographical area not to sell alcohol for an appropriate period of time up to 24 hours. Such orders should be available in connection with any potentially difficult public order situation. A lower test than “riot or tumult” is required: for example, in connection with sports events or public demonstrations where problems might be fuelled or exacerbated by drink.

31. We therefore propose that:

- ✓ a police officer of Superintendent rank or above should be able to apply for an order from a magistrate requiring the temporary closure of any licensed premises for public order reasons
- ✓ such orders be defined by geographical area; or in relation to specified premises; and to last for a temporary period up to 24 hours authorised by the magistrate
- ✓ prevention of sale orders should apply only to alcoholic drinks (so, for example, supermarkets could continue to sell other goods), but with a duty on the personal licence holder to ensure that alcoholic products are not accessible to the public while the order is in force.

Wholesale

32. At present a wholesaler selling a case of wine or two cases of beer at a time does not necessarily need a liquor licence. While the quantities defining wholesale may make sense in terms of excise duty, they do not in many respects match modern purchasing trends. Wholesalers are potential outlets for smuggled goods sold in this way. The “cash and carry” raises similar problems. It is estimated that £215 million in revenue was lost in 1999 as a result of cross-Channel smuggling (not legitimate cross-border shopping) of alcohol. To leave no room for doubt, a solution would be to establish by statute that the exemption only applies to those selling direct to the trade. In other words, we propose that:

- ✓ only wholesalers selling or distributing to the holder of a personal licence currently engaged in the retail trade at premises licensed for that purpose should be exempt from the requirement to hold personal and premises licences themselves.

Mail Order sales

33. The retail industry estimate that about £300 million is being spent annually on alcohol delivered by mail order. Although a relatively small part of a market worth approximately £7.6 billion, the mail order sector is expanding. The development of e-commerce and shopping by internet are likely to increase this trade in future. It is not our intention to introduce special regulation in this area. We consider that the changes to be made on the wholesale side of the business are sufficient to ensure that the main retailers to the public will be caught by the proposed legislation.

34. In the context of underage purchase of alcohol, it has been suggested to us that the sale of alcohol over the internet (or indeed by telephone) is of particular concern. This is because a purchaser who uses a credit or debit card to buy is not seen by the retailer and no judgement can be made about his/her age. Purchases by credit for consumption off the premises (though not purchases of alcohol for consumption on the premises) are currently permitted by licensing law. We do not intend to prohibit credit or debit card purchase of alcohol by mail order or using the internet. There is no evidence of which we are aware that mail order or internet purchase is a key source of alcohol for under 18s. Other than from parents, small quantity purchases from off-licences and supermarkets remain the main source of alcohol for minors. Youngsters away from parental supervision are generally looking for instant gratification which will involve a cash purchase. Another important point is that even where under 18s can gain access to such cards, the cards are unlikely to be used for purchasing alcohol by telephone or the internet because an address for delivery would have to be given. We believe that the vast majority of parents would quickly be alive to unauthorised purchases by younger children. As with consumption of alcohol in the home, control must here be a matter of parental responsibility. Finally, the problem of judging age where orders are placed using electronic communications is a wider issue than just alcohol. It applies to all age-restricted purchases, and the issue needs to be considered in this wider context.

Sales of alcohol from garage forecourt convenience stores

35. The current law makes it extremely difficult for convenience stores located on garage forecourts to obtain a licence to sell alcohol (although the restrictions have been eased in Scotland since 1977). A number of the major supermarkets are now among the leading retailers of petrol and people can already buy alcohol and petrol close to each other, although not from the same premises. The case for maintaining the present restrictions needs to be looked at again. There is also a rural dimension. In some parts of the country, the local garage is the local shop.
36. On the other hand it is important not to give any encouragement to motorists to drink and drive. Progress on that front has been hard-won. Our provisional view is therefore that we are not inclined to allow the licensing of such retail outlets at this time. However, we would like to hear further views from industry and the public on this proposal before taking final decisions.

Motorway Service Stations

37. Even stronger arguments must prevail against the licensing of sales of alcohol from shops, restaurants and food outlets serving the public at motorway service stations. We intend to maintain a full prohibition on such sales.

Alcohol in confectionery and other foodstuffs

38. A licence to retail alcohol is not currently required to sell confectionery which does not contain more than a certain amount of alcohol by weight. However, it is not widely known by the public that it is unlawful to sell this kind of confectionery to children under 16. Liqueur chocolates cannot be sold to children. We have considered whether this age restriction remains justified. The quantities of alcohol involved are small. But we cannot discount the possibility that toddlers might gain access to alcohol by this means from older children who do not properly understand these risks. On balance, the safest position is to preserve the age limit. In addition, in recent years concerns have been voiced about the appearance in the market place of alcoholic jellies and ice-lollies, ostensibly marketed to adults, which can be appealing to younger age-groups. The message should be clear: marketing any alcoholic products to children is wrong. It would therefore make sense to extend the restriction to other foodstuffs containing more than a prescribed amount of alcohol per kilogram. However, this is not an issue about which we have received representations during our review of the licensing laws, and we would welcome views on the issue before making any final decisions.