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## **The Licensing Act, 5 years on: taking stock, and stumbling into the future.**

### Abstract

This paper will reflect on the impact of the Licensing Act 2003 (LA03). It will focus primarily on how the LA03 has been introduced to, and influenced, the Night Time Economy (NTE). More specifically, it will examine the impact of LA03 on alcohol related crime, disorder and harm to health, within an urban context. It will review the evidence base for the impact of LA03, suggesting reasons why the UK experience of extended trading hours is not consistent with international evidence. It will examine the mixed findings from evaluations as to its success/failures/limited influence, and discuss its impact on a number of organisations involved in the promotion and safety of the NTE. It will highlight the continued struggles encountered within the NTE, between the promotion of an enjoyable and profitable NTE, and those who have responsibility for maintaining a safe NTE environment. It will also discuss potential extraneous factors that have superseded LA03, before concluding by offering and discussing some possible avenues for future direction.

### Introduction

The Night Time Economy (NTE) has become a symbol of city centre and urban night-time activity, with a focus predominantly (although not exclusively) on young people as the alcohol consumer. This has driven the growth of the NTE, and is now perhaps culturally embedded as part of our society today. A feature of many urban areas today is the night-time high street, dominated by large chain owned pubs, bars and nightclubs. The problems of alcohol related crime, disorder and harm associated with the Night-Time Economy (NTE) are multi-faceted and complex. Whilst alcohol related crime and harm are not new phenomena, and have been extensively documented and researched, they remain at the forefront of political and media fuelled debates. However, the options and choices available to those faced with trying to deliver a safe and enjoyable NTE are far from simple. The Licensing Act 2003 (LA03) was a major legislative change to drinking regulation in the UK, perhaps the greatest change in over 50 years. It was introduced in November 2005, yet, five years on, its impact remains unclear.

This paper reflects back on the introduction of LA03 and how it has influenced the NTE. It examines the evidence as to its potential successes and failures, and how external drivers have also influenced the NTE (and associated crime, disorder and alcohol related harm). It reflects upon the continued struggles encountered within the NTE, between the promotion of an enjoyable and profitable NTE, and those who have responsibility for promoting and maintaining safety. It will conclude by looking at possible future directions, which are particularly pertinent considering the current economic climate. The focus of this paper is on city centres and urban areas and the NTE, and associated crime, disorder harm. Whilst this does not exclude rural areas, issues of domestic violence related to alcohol, or problems of underage drinking, or the use of poly drugs (all inter-related problems linked to the NTE), these are considered beyond the scope of this discussion.

### Alcohol consumption and crime, disorder and harm

Many factors have been shown to influence drinking behaviour, including: socio-economic status (Kneale, 2001); religion (McKeigue and Karmi, 1993); age (Room, 2007); gender (Measham, 2008); intergenerational influences and education (Bynner, 1998); changes in family structure (Ledoux et al, 2002); peer influences (Reifman et al, 1998); ethnicity (Room, 2005); masculinity (Nayak, 2006); 'calculated hedonism' (Szmigin, et al, 2008); wider influences such as leisure and lifestyle choice (Brain, 2000); media influence and market forces (Metzner and Kraus 2008)' pharmacological influences (Forsyth, 2009); and more broadly structural, legislative and regulatory

factors (Graham and Homel, 2008). Links between crime, disorder and harm are well established, the British Crime Survey (BCS) indicates that 45% of all violent incidents can be linked to offender drinking (Walker et al, 2009), and the British Medical Association (BMA) suggests alcohol use is associated with 70% of stabbings and 50% of assaults or fights (Dingwall, 2006). Research has pointed towards increasing levels of heavy sessional drinking (Measham, 1996) and possible increasingly favourable attitudes towards drunkenness (Hadfield and Measham, 2008), although a recent report (Smith and Foxcroft, 2009) suggests a decrease in drinking among 16- to 24-year-olds in recent years. Studies suggest drinking to intoxication is: deeply embedded in the socio-cultural milieu in which some young people live today (Measham & Brain, 2005); a product of psychological, environmental, social and cultural influences; and that drinking is a learned behaviour (Roche, 2001). However, what is perhaps important to stress is that *no causal link* has been established between alcohol consumption and crime. However, what has emerged over the past twenty years are growing concerns about the extent of alcohol related crime, disorder and harm that can be associated with areas of concentrated NTE activity.

### The focus on the NTE environment

Over approximately the past twenty to thirty years, there has been an increasing focus on the NTE and the concentrated spatial and temporal occurrences of alcohol related crime, disorder and harm. Alcohol consumption has shifted, perhaps both in location, behaviour and acceptance. There has been a move from a traditional mass market of local pubs and a male, manual, working class, towards a new generation of young drinkers aged 18-30, both male and female (Hobbs et al., 2003). Explanations have focussed on the decline of the manufacturing industry (Zukin, 1995), the regeneration of town and city centres as a focus for consumption (Wynne and O'Connor, 1998) and the rapid development of the NTE (Roberts, 2009). Strong links have been found between 'cluster points' of NTE activity (for example areas with a concentration of bars, nightclubs, takeaways and inadequate transport facilities (Bullock and Tilley, 2003). Hope (1986) found one quarter of police-attended incidents (including violence) in Newcastle-upon-Tyne city centre occurred within a 250 square metre area containing 12 pubs with a peak in offences from 11.00pm to 11.30pm. Lister *et al* (2000) found that 29 per cent of recorded violent incidents in Eastville occurred inside licensed premises, and 70 per cent of city centre violence occurred between 9.00pm and 3.00am. Thus there has been an increased focus and shift towards areas with concentrations of NTE activity.

### The costs and benefits of the NTE, and central government agendas

In England and Wales it has been estimated that the license trade employs 1 million people, and that the pub and club industry turns over £23 billion, equivalent to 3% of the UK Gross Domestic Product (GDP) (Hayward and Hobbs, 2007). This has important implications for tourist and economic development. Indeed the NTE can be seen as economic driver towards sustainable city centre living, generating a focus for social activities, employment, cultural life and attractions, and regeneration of parts of some urban areas. There are additional employment benefits for late night transport, and takeaways for example, the infrastructure required to support the growth of the NTE. Furthermore, the industry as a whole contributes around £8.5bn to the Exchequer through excise duty alone (Home Office, 2010).

At the same time, it was estimated (Cabinet Office 2004) that the costs of dealing with alcohol related crime and harms to health is £20 billion. Currently an estimated £8 to £13 billion is spent on the crime and disorder consequences of alcohol, £645 million per year on alcohol related attendances at A&E departments, and £372 million on alcohol related ambulance calls (Home

Office 2010). A 2002 report (Alcohol Concern) put the estimated cost of alcohol misuse at between 2 and 5 percent of the UK GDP. There are costs to police (for short term enforcement and policing of the NTE) and longer term costs to the criminal justice system. There are costs associated with the regulation and enforcement of licensing. There are a wide range of costs to the health sector both in the short term dealing with A+E hospital attendees, and ambulance responses, and longer term impacts of prolonged and often heavy alcohol consumption for the Primary Care Trusts (PCTs) and the National Health Service (NSH). Clearly there is a quandary between the benefits and costs of the NTE, which present difficult choices to those with an interest in promoting both the enjoyment and or the safety of the NTE.

Concerns over alcohol related harm, crime and disorder have featured prominently in central government agendas across a number of departments for a number of years (reflecting the complexities discussed above). Examples include: the National Institute for Health and Clinical Excellence (NICE, 2009) consultation on Alcohol Use Disorders (Prevention) for the Department of Health (DoH); the Alcohol Harm Reduction Strategy for England (Cabinet Office, 2004); the 'Safe Sensible Social' Revised Harm Reduction Strategy for England and Wales (DoH, 2007); the Home Office consultation on how alcohol is sold and supplied (Home Office, 2009); the Advertising Standards Authority Code Review Consultations (BCAP 2004); and the Department for Children, Schools and Families, Youth Alcohol Action Plan (DCFS, 2008).

A major legislative change came as a result of the new trading hours under the Licensing Act 2003 (LA03) introduced in November 2005.

### The Licensing Act 2003

In England and Wales, the Licensing Act 2003 (LA03) was introduced amidst much media attention and political debate and brought with it a set of new conditions for the regulation and supply of alcohol. For a detailed description of these see Newton and Hirschfeld (2009) and Hough et al (2008). The rationale for this was to remove fixed and artificially early closing times, to disperse the volume of those exiting licensed premises in a staggered fashion, with an expectation that this would reduce binge drinking, crime and disorder, and associated harms to health. Moreover, at the time of introduction, the then Culture Minister ambitiously suggested that the introduction of LA03 would bring about a more relaxed and "Mediterranean style" of drinking, with late night cafe bars, as opposed to the "binge and brawl" model which had plagued the development of a safe and enjoyable NTE (Hadfield and Measham, 2010). At the same time it raised fears that increasing hours would lead to greater consumption, increasing alcohol related crime and disorder and associated harms to health, and place additional pressure on policing, A&E units and the ambulance service.

There have been a series of evaluations as to the impact of LA03 on crime and disorder, perhaps best summarised by Hough et al (2008), Humphreys and Eisner (2010) and Hadfield and Newton (2010). What is evident is that "*the jury is still out*" as to its actual impact and there is mixed evidence as to its effectiveness. Perhaps a telling rhetoric from the DCMS and Home Office when publishing its evaluation of LA03 (DCMS 2008) was that its success was measured not by whether it had *reduced crime* (its original intention), but that crime had *not increased*.

The headline findings that perhaps should be drawn from the evaluations that have been conducted are: that whilst nationally there has been a reduction in violence and disorder since LA03, these trends in the reduction of violent crime have been occurring for the past 10 years and therefore cannot necessarily be attributed to LA03 (see Hadfield and Newton, 2010); that these

reductions are mirrored in police recorded crime and British Crime Survey (BCS) data (Hadfield and Newton, 2010) and from violent incidents as monitored by the National Violence Surveillance Network (NVSN) based on accident and emergency data (Sivarajasingham et al, 2009); at the same time hospital admissions for alcohol related harm have increased over the past ten years (North West Public Health Observatory, 2009); that there have been mixed findings locally since LA03, with some areas experiencing increases in violence post LA03 and some areas reductions (Humphreys and Eisner, 2010); and that the findings of the UK experience do not match those internationally where increasing the trading hours of alcohol has resulted in increased levels of crime (Stockwell and Chikritzhs, 2009). A number of potential explanations exist for this unique UK situation; perhaps the most plausible are: that in the UK the average increase in trading hours post LA03 for pubs and clubs was 21 minutes and only 1% of premises that had not previously closed after midnight extending closing hours beyond this (DCMS 2008); that methodological difficulties exist in evaluating the impact of LA03, particularly in isolating and distinguishing policy change at the micro level (between changes in individual premises hours and which crimes they have impacted on) (Stockwell and Chikritzhs, 2009, Humphreys and Eisner (2010); and the impact of other extraneous factors (Hough et al 2008).

### Extraneous factors

There are perhaps some important events that have occurred since the introduction of the LA03, and alongside this there has been perhaps a shift in the policy rhetoric. Some key developments include the introduction of the smoking ban (July 2007) and the UK economic recession. What is unclear is the influence these may have had on licensed premises and the NTE. A Department of Health study (2008) suggested that 25% of persons may now choose not to go to licensed premises as a result of the smoking ban. In addition, and potentially as a result of the recession, there has been a shift in the number of *off* and *on* licence premises. Indeed for the period March 2009 to March 2010 (DCMS, 2010) there was a 1% reduction in the number of *on licence* premises, and a 3% increase in the number of *off licence* premises. New debates have focussed on concerns over preloading, that is, drinking at home before a night out (Forsyth, 2009), and on the ability of large supermarkets to sell cheap discounted alcohol. There have been debates over the introduction of a minimum pricing policy (Meir et al., 2008). At the same time there has been a focus on the need to promote social responsibility standards amongst alcoholic drinks retailers (Home Office/KPMG, 2008).

### Towards more localised regulation and enforcement

Studies have highlighted the importance of place in drinking behaviour (Valentine et al, 2008) and there are locally divergent attitudes toward intoxication, thus management and promotion of a safe NTE should perhaps contain a distinct geographical focus. Indeed as Valentine (2007) comments "*drinking cultures are not uniform across the country, but are embedded within wider historical, socio-economic and cultural contexts*", and that "*more recognition is needed of how national alcohol strategies might be interpreted differently or have a different impact on specific locales*". This is perhaps reinforced by the mixed findings of evaluations of the impact of LA03, and the differences found in levels of violence and disorder between different geographical areas post LA03.

One of the intended benefits of the LA03 was the ability for local areas to manage the permitted number of licences in an area, and the trading hours that these could operate under. However, a consultation document (Home Office 2010) recognised that under the current Act "*there was a fundamental presumption in favour of granting an application for a license to sell alcohol, and that*

*licenses can only be refused or removed if it can be proved that it 'is necessary' for the promotion of the licensing objectives, and only if relevant representation for this has been made by a 'responsible authority'. Those responsible authorities will be considered later in this article. The consultation document emphasises the need to "rebalance the Licensing Act" and "empower individuals, families and local communities to shape and determine local licensing".*

What has become apparent are the difficulties in enforcement at the local level (Hadfield and Newton 2010), and the problems in proving the granting or renewal of a license would negatively impact on the licensing objectives. What is perhaps needed are better tools for local areas to implement local strategies to combat alcohol related problems of crime, disorder, and harm, tailored specifically to local needs. However it is evident at present that limited sharing of intelligence occurs between responsible authorities and related agencies including the health service (Newton et al, 2010, Jacobson, and Broadhurst, 2009), and that there is a real need for local tools: to analyse how the current mix, density, capacity, trading hours, and individual management of licensed premises in an area currently influences crime and disorder (Newton et al, 2010); to determine whether an area has reached a 'saturation point'; and, moreover, what the likely impact of granting an additional license in an area would be. At present there is a limited research and evidence base for this, and there are likely to be additional resource constraints for doing this with the present state of the UK economy and the introduction of the spending review cuts. There are likely to be additional consequences here for those faced with dealing with flashpoints in the NTE (particularly police, A+E units and the ambulance service) and in designing local alcohol crime and harm reduction strategies.

In order to examine this further, it is perhaps useful to look at the key agencies involved, and pose the question: whose responsibility is it to maintain and promote a safe and enjoyable NTE?

#### Managing, promoting and maintaining the safety of the NTE: Whose responsibility is it?

The complexities of the NTE environment make this an extremely challenging question, and whilst the following list is not exhaustive, it attempts to bring together those key individuals and organisations have a role to play in the promotion of a safe and enjoyable NTE.

- Individual consumer and groups of consumers

One group of persons who could be deemed responsible for alcohol related crime, disorder and harm are those who individuals who are actual patrons or consumers in the NTE. Educational and awareness raising programmes can be seen as important for shifting cultural beliefs and acceptances about drinking to intoxication. These can be seen as a longer term strategy, for example those projects delivered through bodies such as drinkaware.co.uk (funded by industry) and the Alcohol Education Research Council. There is perhaps a need for projects that are tailored to local problems and delivered locally. Some examples of those that have seemed to prove more successful include a focus on harm reduction rather than abstinence; involvement of parents as well as children; and targeting children at primary school (Petrie et al. 2007). There is perhaps a need of better evaluations of which aspects of these programmes are likely to be more successful (Foxcroft et al, 1997). This education and awareness raising may be important for tackling the increasing concerns about pre-loading as a long term strategy.

- Licensees, owners and licensed premise employees (on license)

There is a responsibility on those who own, manage, run, and work in licensed premises to adhere to implement effective place management which has been shown to be a key feature of towards

minimising crime and harm, particularly for on licence trade (Madensen and Eck, 2008). Effective design and management of individual premises can be a key feature for reducing alcohol related crime and harm. There are numerous studies here and examples of good practice although perhaps again a limited number of robust evaluations into the most effective measures. In the UK the Best Bar None scheme (<http://www.bbnuuk.com>) is an example of a national awards scheme for good practice in this area. Training of staff and door supervisors is a part of this customer experience. The introduction of the Security Industry Authority door supervision license is now a requirement for those who wish to work in the industry.

There are perhaps two key difficulties facing licensees, the first is that they need the business to be profitable (both independent owners and managers working for large chain operators), and there is perhaps a balance between encouraging and enforcing responsible service provision. Secondly, there is an inextricable link between the management of a premise and the influence of the surroundings of its location. If a premise is run responsibly, once patrons exits (particularly in areas with a high density of licensed premises), often into an area with an inadequate NTE infrastructure (for late night food provision or transport for example), then there may associated crime and disorder problems. There is perhaps a need for this individual premise management to be linked with urban planners and the licensing authority to work in conjunction to manage and maintain a safe NTE both within individual premises and in areas with concentrations of premises.

- Licensed premise owners (off licence)

There is a need for social responsibility amongst those who sell alcohol for off premise consumption, for example not selling alcohol to under age persons, the influence of cheap discounted alcohol, and not selling to intoxicated persons. It is important trading standards work closely with this group towards reducing crime and harm, and they are an important part of the NTE environment. This group also has an important role to play in combating the growing concerns around pre-loading.

- The 'wider' alcohol industry

A recent independent review was commissioned to examine the effectiveness of the alcoholic drinks industry's Social Responsibility Standards in contributing to a reduction in alcohol harm in England (KPMG/Home Office, 2008). There are several sub-sectors e.g. producers, the off-trade and the on-trade; large companies; the small independent and the multi-national interests. A number of codes of practice exist including the Portman Group, the Advertising Association, the Scottish Whisky Association (SWA) and the British Institute for Inn-keeping (BII), the British Beer and Pub Association (BBPA).

- Licensing authorities

At present this group is responsible for the renewal and granting of licenses, and setting license conditions. As discussed previously the present system is fundamentally tailored towards the granting of new licenses unless there is proven reason for objection, which can only be made by responsible authorities. There is an argument for licensing authorities to be part of the decision making process in granting and renewal of licenses, and to work with licensees (as place managers), responsible authorities, and urban design and planners to ensure the infrastructure of the NTE, the density, mixture, capacity and trading hours of licensed premises is manageable (and profitable) and promotes a safe NTE. At present there is limited data sharing, analysis and evidence tools (Newton, 2010) for planning and delivering locally managed licensing strategies, for

example in setting a safe and enjoyable threshold for saturation, whilst encouraging the economic benefits of a profitable NTE. There is also an argument that planners have been on the fringe of this process and should perhaps be more centrally involved (Roberts, 2010) in the designing of NTE areas.

- Responsible authorities (as designated by LA03)

This includes Police, Fire, Health & Safety, Planning, Environmental Health, Child Protection or Trading Standards) or an “interested party” (a person living or involved in business in the vicinity of the premises or a representative body of either). Whilst all these agencies have their own agendas, they are key organisations within the management of the NTE environment. Whilst some examples of good multi-partnership working exist, intelligence gathering often occurs in isolation except for sporadic multi-agency enforcement visits to premises. As many of these agencies will now face a number of cuts as a result of the Spending Review it may be that efficiency gains can be delivered by developing a local effective model to share intelligence for the purposes of alcohol related crime disorder and harm reduction. Predominantly the police and trading standards are involved with enforcement (which faces a number of difficulties in the present system (Hadfield and Newton, 2010). However environmental health, planning and the fire service and all agencies have a key role to play in the development of local strategies that both promote and maintain safety within a profitable NTE.

- The Health Service

One of the difficulties for the health service is that despite the costs of alcohol related crime disorder and harm to this service, they are not considered a Responsible Authority. It has a key role to play in the delivery of a safe NTE. A further difficulty is that A&E data and ambulance data is often not shared with the police and other responsible authorities (Jacobson and Broadhurst, 2009). This is a key piece of intelligence that is missing, particularly considering the under-reporting of violent incidents to the police (it was estimated by Shepherd, 1998, that only 25% of assault incidents are reported to the police).

- Other organisations

There are a number of other additional facets of the NTE which have not been featured in the above discussion. An interesting role is that of Community Safety Partnerships (CSPs). Many of their member organisations fit within the existing LA03 legislation as a responsible partner, some are a responsible partner under the Crime and Disorder Act (1998), and some will be both. These partnerships may provide a structure within which data on alcohol related violence and disorder can be shared freely, but here a number of obstacles (Newton et al, 2010) are still evident. Whilst tackling violence and disorder in the NTE are always likely to remain a key priority for these partnerships, they are one of a number of priority areas for the CSPs. Their future role here is perhaps still unclear.

Additional organisations have an interest in the NTE. For example, the regulation, monitoring and effective use of CCTV (which includes systems managed by local authorities and the police, and also private CCTV systems. There have been a number of questions raised, particularly as to their effectiveness (Taylor, 2010) yet they remain an important tool that should be part of any local NTE strategy. Public transport services are another key feature of the NTE, including buses, trains and trams, but also private taxis. Again they are an important component for the NTE infrastructure and should not be overlooked in designing local strategies. The role of the Magistrate’s courts is

another key feature (Norton, 1998) and some responsible authorities have raised questions over what they perceive as lenient sanctions that have been imposed (Newton et al, 2010). There are also a number of voluntary organisations who operate on a local level who have could potentially be actively incorporated within local NTE strategies.

### Potential next steps

This final section of this paper attempts to offer some suggestions as to potential avenues for future direction.

- Improved local intelligence and decision making

What is perhaps lacking is a local system or evidence base of shared information which has a *“strategic overview of the timing and location of the availability of alcohol, the proximity of the various outlets to each other, and their relationship to crime, disorder and harm. This evidence base is a necessary foundation for making informed decisions about the management of areas with licensed premises, including: the granting and renewal of licensing applications; the development of local crime prevention and harm reduction strategies; and targeting policing and other enforcement activities”* (Newton et al, 2010).

There are a number of proposals outlined by the new coalition government (Home Office 2100, and the key suggestions are:

- making it easier for communities to have their say on local licensing incorporating the views of the wider community and not just those living close to premises;
- taking tougher action against underage drinking (increasing fines and bringing in automatic licence reviews for problem premises
- charging a fee for late-night licences to pay for extra policing costs
- to scrap Alcohol Disorder Zones;
- to ensuring policing and health concerns are fully considered when assessing licence applications;
- to increasing licence fees so that local councils can cover costs linked to enforcement
- to tightening up rules for temporary licences
- to introduce a ban the sale of below cost alcohol and consulting on how this can be achieved.

Whilst this suggests the police, health service and wider community will have more say in local licensing decisions, question marks remain as to how this will be done, what evidence base will be used for this, and the level of ‘proof’ required to deny or revoke licences. It seems evident that some of costs of enforcement and regulation of licensing will be passed on to licensees, which will make it more difficult (particularly in the current climate) for them to run economically profitable businesses and may discourage some of the good practice established in promoting social responsibility.

The introduction of minimum pricing for alcohol is another area of contention. One of the key arguments against this is that it will actually penalise *“the majority of people (who) drink responsibly”* (Home Office 2010). Furthermore there are questions as to how this will be enforced and regulated, what impact this potentially might have on “bootleg alcohol” (illegally imported alcohol), the extra resource constraints this will put on trading standards or other organisations to

enforce this, at what price this will be set and how this will affect different alcoholic drinks (for example will this be based on alcoholic strength). There is however support from international evidence that this has proved successful elsewhere (DoH, 2008).

- Revisiting licensing hours

Perhaps an alternative option would be to re-introduce and centralise the regulation of licensing hours. However, despite the limited impact of LA03 and the difficulties experienced in its implementation, a further change back towards centralised regulation would prove costly. What the current Act now offers (although this has perhaps been introduced in a haphazard fashion) is a framework within which local effective regulation of licensing could be delivered. Perhaps the challenge here is to empower local areas with the resources, intelligence and enforcement powers to manage their NTE in an effective and profitable fashion.

- The big society

A big driver for the current government is the introduction of the big society: *to give citizens, communities and local government the power and information they need to come together, solve the problems they face*. Clearly within the promotion and regulation of the NTE there are a number of organisations that have a role to play, sometimes with conflicting interests. The challenge perhaps faced here is what *powers* (there are clear local enforcement difficulties at present with regulating licenses) and what *information* (there are a number of deficiencies in current information sharing and intelligence gathering of local problems).

This paper has attempted to summarise some of the key impacts that LA03 has had on the NTE, and associated problems of crime, disorder and alcohol related harm. It has tried to outline the complexities in tackling the problems that exist, and those key organisations that have a role to play in delivering a safe and profitable NTE. There are clearly a number of obstacles that exist in delivering a safe NTE, and some potential steps for the future have been discussed. What is perhaps clear is that the delivery of a safe, enjoyable and profitable NTE is a challenge that is likely to continue for a number of years.

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