Unequal partners:
A report into the limitations of the alcohol regulatory regime

Alcohol Concern
Making Sense of Alcohol
Alcohol Concern Is

- The national agency on alcohol misuse
- Working to reduce the level of alcohol misuse, and to develop the range and quality of helping services available to problem drinkers and their families
- England's primary source of information and comment on a wide range of alcohol related matters

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Executive Summary
Leading figures from the UK drinks industry assert that alcohol-related crime and disorder is carried out by an irresponsible minority of drinkers, often painted in the media as criminal, anti-social ‘yobs’. These views resonate in the successive pieces of legislation that were introduced to reduce anti-social behaviour and disorder (the Criminal Justice and Police Act 2001, the Anti-Social Behaviour Act 2003 and the Violent Crime Reduction Act 2006) all of which make it easier for the police to penalise individuals for any disruptive and dangerous behaviour arising from alcohol misuse.

Yet surveys of alcohol-related violence show that those arrested for violent crimes tend frequently to be first-time offenders and that for the most part they are actually conventional young people who study, train or work responsibly during the week and then ‘take time out’ during the weekends. It has to be asked therefore how some drinkers come to cause or experience alcohol related harm, in the context of their apparently ‘conventional’ backgrounds.

Nevertheless, the assumption of an ‘anti-social minority’ lies at the heart of government policy and has served proponents of drinks industry self-regulation well. In order to guard against the irresponsible sale and promotion of alcohol the Government has encouraged the creation of a complex, multi-layered web of laws, voluntary codes and guidelines to ensure responsible practice. These have origins both in statute (i.e. Licensing Act 2003) and in a multitude of voluntary codes that were developed and are now managed by the main trade associations representing the licensed industry. This paper argues that the current system is not working and does not protect the public from irresponsible licensees.

The reasons for this are two-fold. First, the current voluntary regime allows licensees to ignore the principles set out in the codes as it suits them because there are no meaningful sanctions for those who are found to be in breach. Secondly, Government departments have not always provided local areas with sufficient resources or guidance to effectively tackle problem licensees using their considerable powers under the Licensing Act 2003.

As political pressure grows for a solution to the problem, the time is ripe to recast the way industry and authorities work together to reduce alcohol-related harms. The Government (and its agencies) enjoys considerable administrative reach and so must be the natural choice to oversee an increasingly large and complex industry. This does not imply that self-regulation has no role - rather that self-regulation should be limited to aspects of licensing that can be realistically managed, allowing it to have greater credibility.

The National Consumer Council has usefully
itemised a number of key features that a self-regulatory regime should include to be genuinely effective (2005):

- clear objectives
- adequate resources
- public accountability
- effective sanctions
- a dedicated, independent structure.

In order to enable greater accountability for licensee practice and to allow the drinks industry to benefit long-term from a level playing field, the creation of a fair independent regulatory system is required, both to encourage good practice and to deal swiftly with irresponsible licensees. Alcohol Concern makes the following recommendations for Government to consider.

1. Establish a new, independent watchdog

Alcohol Concern believes that local authorities, agencies and premises would benefit from an independent watchdog body that provided both licensing officers and licensees with reliable information and guidance around their responsibilities under the Licensing Act. The organisation could be formed as a statutory non-departmental body under the auspices of more than one department (as with the Food Standards Agency) and could improve standards of retailing by encouraging industry-wide standards on training and guidance about how to write policy. Sanctions, where applicable, could also be applied by the watchdog, acting as an independent advocate for public health and community safety.

Moreover, because the agency’s staff would develop a far clearer picture of the obstacles local agencies face, it could take over responsibility from the DCMS for revising the formal guidance accompanying the Act and ensure that it was fully alive to the main concerns that a licensing officer is likely to encounter.

Finally, any such new body could also establish better, formal partnerships with the main trade associations for the benefit of members and non-members alike and support the establishment of local licensee forums. It could also roll out national best practice schemes that regularly celebrate the achievements of licensees who run well-managed premises.

This body would have to be constituted under statute with full independence to enforce responsible licensee practice. Lessons can be learnt from Scotland, where there has been a stronger approach on under-age sales, promotions and training requirements and greater emphasis on maintaining licensing standards. Alcohol Concern would recommend that the Government explores different watchdog structures (Ofgem, FSA, OFCOM, Gambling Commission) to ascertain the appropriate model for the drinks industry.

2. Establish in the first instance a national alcohol enforcement team (DCMS/Home Office)

As a possible short-term precursor to setting up an independent watchdog body (see above) and in line with the proposal of the Rogers’ Review (to make alcohol licensing a national enforcement priority) this specially constituted enforcement team (comprising officials from the DCMS, Home Office and secondees from local government and enforcement agencies) would focus their attention on building capacity among the nearly thirty local authorities that report they are not confident about their ability to manage the licensing regime (Rogers 2007). Their brief
would be to organise training for licensing officials on the full implications of the Licensing Act, import best practice from more successful areas and pilot new initiatives. Drawing on their frontline experiences, they would also advise the DCMS and Home Office on the drafting of new guidance documents to accompany legislation and provide clearer advice for local authorities.

3. Make the development of harm reduction policies a condition of applying for a premises (or club) license

So that local authorities have clear, formal reassurances that applicants are committed to harm minimisation, it should be made a condition of applying for a new premises license that the applicant be able to demonstrate that they will either buy in or provide in-house training for staff on responsible serving practice, develop clear disciplinary procedures for employees found to have made an illegal sale, and provide better point of sale information. Alcohol Concern would also recommend to the Government that they go beyond Standards (see page 21) and officially end the practice of Happy Hour promotions with a clear ban.

4. Review the fee setting system

To tackle the current deficit the Secretary of State for Culture, Media and Sport should review whether the current cap is appropriate and instead consider setting a more generous maximum limit. To pre-empt the situation whereby license applicants in low problem areas are forced to pay more because other local authorities face higher enforcement costs, local authorities could be empowered to set a reasonable cap based on their actual enforcement costs on the basis of a yet to be determined formula. Moreover, within authorities it is clear that some licensed premises are more likely to incur higher enforcement costs. To ensure that lower risk establishments are not penalised as a result of this the Government should also consider establishing a clear sliding scale system. To safeguard against opportunism, the DCMS could retain power to approve the authority’s decision about where to set the fee limit.

5. Promote the establishment of local residents’ pressure groups among councils and raise more awareness among residents of their rights

The DCMS should encourage all local authorities to set aside a proportion of their licensing budget to fund a local residents' licensing forum through which concerns could be addressed in a relatively informal environment. Nationally, more work is required to ensure that all sections of the community are empowered to tackle alcohol-related harms by raising awareness of residents’ rights to seek reviews and make representations. This should include the development of a leaflet all local authorities can distribute with advice on how to make representations and seek reviews.

6. Fast track licensing appeals

So that the conclusions of a licensing committee hearing are not unnecessarily delayed because of a lengthy waiting time before the magistrate hears the appeal, the Ministry of Justice, working with the DCMS, should amend relevant existing legislation to stipulate a maximum waiting time between a committee’s
review decision and any appeal in a magistrate’s court. In cases where the licensee wishes to take the case to a higher court if they are unhappy with a magistrate’s ruling, any conditions that were imposed during the review hearing should at least be temporarily applied while the parties await a hearing date.

Conclusion

Alcohol Concern believes a thriving, economically viable drinks industry has benefits for the economy and consumers who choose to drink safely. However, the incentive for profit must never be at the expense of individual drinkers, those affected by alcohol misuse or communities in general. In order for a ‘new deal’ to be struck between the Government, the industry and consumers there must be safeguards in place to hold industry accountable for its actions.

In a self-regulated market, poor industry practice has for too long been allowed to contribute to alcohol harms. The Government has a unique opportunity to introduce a new regulatory regime, which enables it to meet its own targets to reduce alcohol harms. Any failure to do so will be a missed opportunity and a costly one.
1. Introduction
Leading figures from the UK drinks industry frequently state that alcohol-related crime and disorder is carried out by an irresponsible minority of drinkers, often painted in sections of the media as criminal, anti-social ’yobs’. However, surveys of alcohol-related violence show that individuals arrested for violent crimes tend to be first-time offenders (Maguire and Nettleton 2003) and that for the most part they do not come from backgrounds that engender violence or other criminal behaviour. Instead, a definitive study of young people in the North West found that the majority of at risk heavy drinkers are actually conventional young people who study, train or work responsibly during the week and then ‘take time out’ during the weekends (Egginton, Williams and Parker 2002). Their drinking patterns and subsequent behaviours do not appear to be determined by their background.

Therefore, it would be inaccurate to describe those who experience (or cause) alcohol-related disorder as somehow very different from the general public. Nevertheless this assumption lies at the heart of government policy and serves proponents of industry self-regulation well. Successive pieces of legislation aimed at reducing anti-social behaviour and disorder (the Criminal Justice and Police Act 2001, the Anti-Social Behaviour Act 2003 and the Violent Crime Reduction Act 2006) all make it easier for the police to penalise individuals for any disruptive and dangerous behaviour arising from alcohol misuse.

The way legislation is weighted against the individual in comparison to poorly operated licensed premises runs against various studies of anti-social behaviour that show that violent incidents are far more likely to occur in (or around) certain bars, pubs and clubs than in other, better managed premises.

In order to counter poorly run licensed premises and to ensure the responsible sale and promotion of alcohol in the UK, Government departments have largely relied upon a self-regulatory regime aimed at improving industry practices throughout the country, alongside the current Licensing Act.

This paper argues that there is no evidence to suggest that under the present self-regulatory system trade associations or voluntary codes are able to influence the attitudes and practices of the tens of thousands of premises now trading today. Indeed, this paper argues that the current system is not working, allowing irresponsible licensees to continue trading and contributing to rising alcohol harms.

In conclusion, Alcohol Concern argues for a new, more accountable regulatory regime in which Government and the public have a greater say in how the industry is run and that improved mechanisms of regulation, communication and monitoring are required to safeguard consumers of alcohol and the general public.
2. The relationship between licensee practice and alcohol-related harms
2. The relationship between licensee practice and alcohol-related harms

“I have been a manager for 30 years in these super pubs and in town centres. How we make our money is to make people binge drink: the more people drink, the more I get as a bonus.”

Dave Daley, President, 2005, National Association of Licensed House Managers (now Licensees Unite)

2.1 Introduction

Last year it was estimated that there were 123,700 licensed premises in which members of the public could purchase alcohol (Antoniades et al 2007), comprising a market with an estimated total worth of £40 billion per annum at retail selling prices (WSTA 2007). At the same time, alcohol misuse is related to 1.2 million violent incidents per year and 360,000 incidents of domestic violence (Cabinet Office 2003).

This chapter charts the relationship between licensee practice and disorderly incidents. Its essential argument is that management decisions by licensees can ultimately determine whether customers put themselves or other patrons at risk after drinking heavily. Conversely, by improving their sales practices, owners, managers and staff appear uniquely positioned to minimise the chances of their customers falling in harm’s way.

It concludes with a review of three popular models used by local communities and governments to promote good practice among their bar industries. International experience suggests that partnership with the industry is capable of driving down harms but that programmes of this kind depend on effective enforcement and community pressure to deliver sustained improvements.

2.2 Pathways to high risk behaviour

There now exists a preponderance of evidence demonstrating the connection between poor sales practices and an increased risk of violence occurring on, or nearby the establishment concerned (Ireland and Thommeny 1993; Rossow 1996). The reasons for this appear varied. Poor layout and restricted access to the bar, badly maintained premises, insufficient seating and loud music can all increase customers’ feelings of frustration and aggression (Deehan 1999). This appears particularly true of ‘high risk’ customers (see Box 1).

It would be mistaken however to understand alcohol-related disorder solely in terms of the way particular physical drinking environments induce feelings of frustration and aggression among young people who visit bars, pubs and clubs regularly. Consecutive studies carried out in Cardiff and the North West have in fact shown that those arrested for violent crimes are frequently first-time offenders with conventional lives based on study, work and weekend socialising (Maguire and Nettleton 2003; Egginton, Williams and Parker 2002).

To explain why otherwise ordinary young people find themselves in violent or injurious situations when socialising, researchers contend that popular notions of masculinity, which both encourage and are reinforced by heavy drinking, create fertile ground for violence and other...
high-risk behaviour. For example, drinking is frequently used by young men to underline ‘manliness’ (Campbell 2000) and attitudes of this kind engender binge-drinking of an intensity that enable certain environmental cues to influence a person more towards aggression and violence than they would in more sober circumstances (Steele and Josephs 1990).

Such environmental cues within licensed premises stem directly from management decisions. A permissive attitude towards already drunk and/or aggressive customers, tolerance of fights, or drug-taking on the premises, and the presence of minors are all predictors of disorderly behaviour (Quigley et al 2003; Homel and Clarke 1994). In essence, as the patron drinks an ever greater quantity of alcohol, he (and sometimes she) becomes more prepared to engage in physical conflict as their confidence in their strength grows and fear of serious censure, either from bar staff or peers, diminishes.

A similar pattern is detected when alcohol-related accidents occur. Exposure to large quantities of alcohol leads to diminished cognitive ability, and greater risk-taking behaviour (Heather 1994). The onus for the responsible sale of alcohol is particularly apparent as the most commonly identified locations for alcohol-related accidents outside the home are urban streets (39%) and social venues such as pubs, clubs and discotheques (14%) (DTI 2001).

2.3 International strategies for mobilising industry actors

Fortunately, as our understanding of alcohol-related harms has developed, so too expectations have grown about the steps licensees should take to prevent alcohol-related injury among their customers (Babor et al 2003). Throughout Europe, the owners and managers of bar establishments are now legally obliged, through licensing conditions of varying rigour, to minimise harmful on-site practices (WHO 2008). Responsible beverage service (RBS) training programmes, for example, have emerged as the most popular choice among licensees for changing attitudes and improving

A 2007 Home Office inquiry into alcohol-related crime and disorder discovered that just 15 premises in Guilford and Blackpool were responsible for between 65% and 79% of the violent crimes committed against the person in those areas

Hough et al 2007
skills among bar staff. The schemes, which equip the staff and management of licensed premises to deal more effectively with intoxicated customers, are now offered in various forms throughout the industrialised world (Graham 2000) (see Box 2). It should be noted that such programmes are not a mandatory feature of licenses in the UK.

This is regrettable as successive studies into the effectiveness of RBS programmes have concluded that while they are capable of reducing average levels of intoxication among patrons (Geller et al 1987; Russ and Geller 1987; Saltz 1987; Stockwell et al 1993). However it appears that their impact is greatest only in cases where staff and management face either a legal liability for alcohol-related damage or concerted pressure from the community to curtail poor practices (Holder et al 1993; Sloan et al 2000).

Three types of initiative are generally used internationally to persuade industry management and staff to act responsibly in relation to alcohol sales and promotion: voluntary codes of practice, community mobilisation and legal enforcement:

1) Voluntary codes of practice: These entail bar owners agreeing to voluntarily limit risk factors present in their establishments.

Unfortunately, there are no published controlled studies into the effectiveness of this kind of scheme, but from the few informal evaluations that exist it has been surmised that such codes have the greatest positive impact when carried out with the active support and collaboration of local law enforcement agencies (Lang and Rumbold 1997; Homel et al 1997).

2) Community mobilisation: Local residents are often keenly aware of the level of alcohol-related crime and disorder in their areas (Hough et al 2008) and increasingly agencies are making its curtailment a key priority (DCLG 2007). Community mobilisation strategies, which entail the development of specific local targets, supported by a ‘joined up approach’ from local agencies have shown a considerable degree of success in bringing down alcohol-related harms, often over a sustained period of time (Hauritz et al 1998; Buka and Birdthistle 1999; Homel et al 1997). They appear to have worked best where agencies have developed clear lines of accountability with each other and the local licensed industry through the formation (for example) of community forums; and agreed upon specific programmes of improvement, backed up with regular visits from local licensing inspectors. The main weakness of community mobilisation lies in its sustainability - given the often high running

**Box 2: Responsible Beverage Service Programmes:**

- **Attitude change**: Working with staff and management to raise awareness of the benefits of preventing customers from becoming intoxicated.
- **Knowledge/Skills**: Training to spot signs of intoxication and how to diffuse tense situations, and if necessary, refuse service; information on the legal situation.
- **Policy Development**: Clear management guidelines requiring staff to check age identification and adopt a pro-active approach to prevent customers from getting overly intoxicated.
costs, and competing demands on agency time (Babor et al 2003; LGA 2007).

3) **Statutory regulation**: Internationally, the greatest levels of good practice can be found where there are clear legal and/or financial penalties for irresponsible sales, coupled with effective enforcement of the existing laws (Jeff and Saunders 1983; McKnight and Streff 1994; Ruhm 1996, Sloan et al 1994). Home Office enforcement campaigns, for example which identify premises persistently selling alcohol to under-aged customers have been shown to dramatically improve industry practice, with test purchase failure rates falling by 16% among ‘on-licensed’ premises and 10% among off-licensed premises over the space of just two years, with successive falls thereafter (Home Office 2006).

In summary, the pivotal role management and staff play in both mitigating and creating risks means that accountability within the licensed industry is vital to any serious attempt to drive down alcohol-related harms. Sustainable, high quality training programmes for staff, together with well developed in-house policies and the attitudinal shifts that accompany these improvements can and do result in fewer irresponsible sales to the public. The challenge for policy makers lies in incentivising licensees to implement these policies through measures that are proportionate, consistent and targeted enough to secure the active co-operation from management and staff working in the licensed industry (BRTF 1999).

The following chapter argues that the present self-regulating arrangements for licensees in England do not meet these requirements, thus explaining why alcohol-related harms continue to rise, despite a reported overall decline in alcohol consumption.
3. UK alcohol sales regulations: An evaluation
3. UK alcohol sales regulations: An evaluation

“There is a lot of good work being done to tackle the damage that alcohol misuse can do to individuals, to the people around them, and to the communities they live in. But I want to go further. Government must lead the way and I am determined to use all the powers at my disposal to bring about change. But in order to do this we also need the support of industry, enforcement authorities and communities. We all need to meet our responsibilities to make a difference.”

Home Secretary Jacqui Smith, 2008

Figure 1: A single dimensional regulatory spectrum (Bartle and Vass 2005)

<table>
<thead>
<tr>
<th>No regulation</th>
<th>Self-regulation</th>
<th>Co regulation</th>
<th>Statutory regulation</th>
</tr>
</thead>
<tbody>
<tr>
<td>No explicit controls on an organisation</td>
<td>Regulations are specified, administered and enforced by the regulated organisations</td>
<td>Regulations are specified, administered and enforced by a combination of the state and the regulated organisation(s)</td>
<td>Regulations are specified, administered and enforced by the state</td>
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3.1 Introduction

State authorities face a number of difficult choices whenever they opt to use new regulations to secure specific outcomes (see Figure 1). This is particularly true in England, where arguments in favour of the Better Regulation agenda (which champions a ‘light touch’ approach) have shaped the way the Government approaches the question of industry and market oversight (BRTF 1999; Bartle and Vass 2005). Yet, while self-regulation has a number of advantages it sometimes sits uneasily alongside public demands for transparency and accountability. The resultant tension means that it often becomes necessary to make various compromises in order to accommodate these competing impulses (Bartle and Vass 2005).

Alcohol is no exception to this rule. The sale of alcohol is now characterised by a complex, multi-layered web of laws, voluntary codes and guidelines. These have origins both in statute (Licensing Act 2003) and in a multitude of voluntary codes that were developed and are now managed by the main trade associations representing the licensed industry (see Figure 2). Both the statutory and voluntary systems of regulation share an acceptance that licensed premises have a crucial contribution to make to reducing harms. Chapter 2 described three strategies that authorities in a number of
countries have used to mobilise their licensed industry towards this goal. All three exist in modified forms throughout England. This chapter develops the argument that without some fundamental changes however, the prevailing regulatory regime will remain incapable of driving forward improvements among licensees whose practices are inadvertently fuelling alcohol-related harms.

**Figure 2: Alcohol sales regulation landscape**

<table>
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<tr>
<th>Self regulation</th>
<th>Statutory regulation</th>
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<table>
<thead>
<tr>
<th>Co-regulation</th>
</tr>
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<tbody>
<tr>
<td>Formal meetings between authorities and alcohol industry:</td>
</tr>
<tr>
<td>● Review progress of existing initiatives</td>
</tr>
<tr>
<td>● Seek views on key proposals, oversee progress and assess risks and mitigation strategies</td>
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**3.2 Statutory regulation: Licensing 2003**

Following a protracted journey through parliament the Licensing Act 2003 came into force in England in November 2005. This legislation has four objectives (crime and disorder prevention; the promotion of public safety; public nuisance prevention and child protection). The Act empowers local authorities to compel licensees to adopt specific harm reduction measures when it is apparent that poor practice on a licensed premise is causing incidents of harm to rise or it is discovered through test purchasing schemes that staff are persistently making illegal sales (such as to the clearly intoxicated or the under-aged). In such cases one (or more) of six responsible authorities (the Police, Health and Safety, Trading Standards, Child Protection, the Fire Service, and Environmental Protection) may
insist that the license is reviewed.

Approximately 50 working days after a review is sought a committee hearing, normally involving three councillors, is held. Depending on the gravity of the accusation and any extenuating circumstances, the panel can either revoke the license, stipulate additional measures that the licensee must take to reduce risk, or take no action.

This is an important power and is one of the only two methods (see below for a discussion of Alcohol Disorder Zones) through which local authorities can compel irresponsible premises to improve the way they sell alcohol. The possibility of their license being revoked should be a powerful deterrent against poor practice, but it is unclear whether this carries real weight with poor performers.

For example, successive Home Office-led test purchasing schemes have revealed the existence of a hard core minority of (10-15%) licensed premises where staff continue to make illegal sales to the under-aged, despite widely available programmes such as Challenge 21 that are designed to prevent their repeated occurrence (Home Office 2006). Yet according to 2006/7 DCMS figures, only 0.5% (680) of licensed premises were called up for review (Antoniades et al 2007).

A DCMS sponsored inquiry into financing of the licensing regime may help to explain why a sizeable minority of local authorities are unable to use the powers available to them as fully as the Government intended (Burnham 2008; Rogers 2007). Briefly, the Licensing Act 2003 mandates the Secretary of State for Culture, Media and Sport to set fees centrally. Fee levels are determined against what the Government claims is the total sum required to recover the costs of administering the regime. Recently however, the Government’s estimates were called into question by the Elton Review into fees levels. Elton calculates that for the three year period 2004/05 to 2006/07 local authorities will have reported licensing losses of £97 million (Elton, et al, 2007).

The scale of this shortfall may explain why in the course of the review it was discovered that spending on enforcement differs widely, with only 15% of authorities covering their costs in full from existing fee income. Local authorities which had broken-even generally conducted fewer appeals and hearings than those authorities, which, having applied greater levels of inspection and enforcement, were subsidising the regime with non-fee derived income. (Elton, et al, 2007). Clearly, the evidence suggests that the current fee structure acts as a disincentive for some authorities to act robustly.

### 3.3 Community mobilisation: The Violent Crime Reduction Act (Alcohol Disorder Zones)

In the United States, when state authorities make owners and bar staff legally liable for alcohol-related damage it has been shown to result in lower rates of traffic-related fatalities and homicides than in states where owners do not face legal liabilities (Sloan et al 1994: Babor 2003). The idea that the ‘polluter’

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10-15% of licensed premises are found to persistently sell alcohol to the under-aged yet only 0.5% licensed premises are called up for review

Antoniades, 2007

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should pay has recently been incorporated into UK alcohol law through the establishment of Alcohol Disorder Zones (ADZs) (OPSI 2006). While described by the Government as a ‘measure of last resort’ the Home Office estimates that their successful introduction could lead to a reduction in alcohol-related violence of up to 10% (Home Office 2008). In Manchester City Centre, where the scheme was trialled between 1999/2000, serious assaults fell by 46% (Home Office 2008).

Under the relevant legislation a local authority, in agreement with the police, can designate an area as an ‘Alcohol Disorder Zone’ after which specific measures can be introduced that are intended to curb both the activities of individuals undertaking alcohol-related disorder and those found to be contributing to harms through the sale of alcohol. Each local authority, together with its Crime and Disorder Reduction Partnership (CDRP), would agree a number of targets for the reduction of alcohol-related crime based on their assessment of the problem and the expected impact of the actions in an action plan.

It must be emphasised that the imposition of financial penalties becomes appropriate only if earlier attempts at partnership work - during which the licensee (or area manager/ company director) is invited to agree to a specific course of action with the CDRP - fail to deliver progress on any of the main targets.

ADZs mark an important step forward towards a more reciprocal form of partnership between licensed premises and local agencies. It is therefore regrettable to learn that only a third of authorities are planning to implement them (LGA 2008). In their letter to the Lords’ Merits Committee the Local Government Association explains the widespread wariness among their members in terms of the considerable set-up costs entailed and concerns about legal challenges from licensed premises (LGA 2007). As with the implementation of the Licensing Act 2003, there appears to be a genuine need for Whitehall to provide more unambiguous guidance to local authorities to raise local officials’ confidence levels over the extent of their powers for licensed premises (Burnham 2008).

3.4 The role played by trade associations

The sheer size of the alcohol market means that to date the Government has relied on a ‘round table’ approach when developing new alcohol harm reduction policies (see Figure 2). Currently the most active and influential trade groups working with central government Departments are the British Beer and Pub Association (BBPA), the Wine and Spirits Trade Association (WSTA), the Scotch Whisky Association (SWA), the Association of Convenience Stores (ACS) BII (formerly the British Institute of Innkeeping) and the Portman Group. However, trade associations have historically enjoyed a broader role than their status as consultative bodies might imply.

Prior to November 2005 the usual practice was for these trade groups, and the larger manufacturers and ‘pubcos’ to develop and promote what became a preponderance of voluntary codes independently of one another. Although this inevitably created considerable scope for duplication, overlap, confusion and omission, the Government defended the use of trade association codes with three arguments. Firstly, they enabled officials to harness the ‘inside’ knowledge and expertise of practitioners; secondly, it is cheaper for both authorities and the firms being regulated, and finally, it allowed
both sides to respond quickly to new and changing circumstances without having to resort to the lengthy legislative process (Baggott 1989; 2006).

More recently, to support the launch of the Licensing Act in November 2005 the principal trade associations tried to rationalise the self-regulatory landscape by publishing Social Responsibility Standards for the Production and Sale of Alcoholic Drinks in the UK - henceforth described as Standards (BBPA 2005). Standards distilled the older advice on voluntary good practice into a single set of non-mandatory recommendations relevant to the retail (on-licensed and off-licensed trade) and producing sectors (see overleaf for Box 3).

While not without merit, all three points made in defence of the system essentially hinge on whether or not there exists what Rob Baggott calls ‘effective systems of communication and control’ to connect industry representatives with the thousands of managers and landlords whose behaviour government officials are actually seeking to affect (Baggott 1989; 2006). In respect of a licensed industry that has grown large, diverse and unwieldy there is now considerable doubt over whether trade associations are in fact influential enough to drive through improvements on their own.

Industry groups have no real sanctions to hand to penalise errant members and certainly they cannot guarantee to affect the behaviour of non-members. A case in point is the cross-section of ‘case studies’ measuring the impact of the Responsibility Principles that key industry trade groups submitted to the Department of Health in 2006. The document casts substantial doubt on these small groups’ capacity to successfully embed best practice among their members and the wider industry (DH 2006).

For example, although Standards recommends that disciplinary policies be put into place for staff found to have made an illegal sale, figures supplied by the BBPA to the Department of Health indicate that 36% of the nation’s pubs still have no disciplinary procedures in place for staff found selling to drunk customers, and 43% of pubs have no policies in place for staff found selling to the under aged (DH 2006).

To examine whether practice recommended in Standards has been widely adopted Alcohol Concern conducted a survey of popular night-time venues in Nottingham’s city centre during Easter 2008. This was during the time when a BBPA Point of Sale Promotions code was in effect, discouraging price promotions that incentivised heavy drinking.

Alcohol Concern’s research found that promotions of the kind proscribed in the BBPA code were being offered in three of the six bars it visited and that several of the principles recommended in Standards were not being followed (see Box 4 on page 23).

Alcohol Concern also interviewed a Nottingham town centre bar manager (see Box 5 on page 24) who provided a description of the tactics used by bars in Nottingham when speaking on the record to Alcohol Concern. Of particular note is the honest self-appraisal of the attitude of bar managers in general, where incentives for heavy consumption appear to override those of health and safety.
Box 3: Alcohol Social Responsibility Principles. Individuals and companies within the trade are expected:

- To promote responsible drinking and the ‘Sensible Drinking Message’.
- To avoid any actions that encourage or condone illegal, irresponsible or immoderate drinking such as drunkenness, drink driving or drinking in inappropriate circumstances.
- To take all reasonable precautions to ensure people under the legal purchase age cannot buy or obtain alcoholic drinks.
- To avoid any forms of marketing or promotion which have particular appeal to young people under the age of 18 in both content and context.
- To avoid any association with violent, aggressive, dangerous, illegal or anti-social behaviour.
- To make the alcoholic nature of their products clear and avoid confusion with non-alcoholic drinks
- To avoid any suggestion that drinking can enhance social, sexual, physical, mental, financial or sporting performance, or conversely that a decision not to drink may have the reverse effect.
- To ensure their staff and those of companies acting on their behalf are fully aware of these Standards and are trained in their application in their own areas of responsibility.
- To ensure that all company policies work to support these standards.

*Social Responsibility Standards for the Production and Sale of Alcoholic Drinks in the UK (2005)*
Box 4: A snapshot of a Thursday night out in Nottingham:

Alcohol Concern carried out a survey of Nottingham bars on the Thursday night before Good Friday 2008. Much of Friday’s regular trade shifts to the Thursday before Easter weekend as most people are free from work the following day. We focused on six premises in Nottingham between the hours of 9pm and 2am. The establishments themselves are all located within and around the city’s Market Square. They were:

1) JD Wetherspoon, The Roebuck Inn, St James St, NG1 6FH
2) Cuckamaras, 1 Hurts Yard, NG1 6JD
3) Walkabout, 15 Friar Lane, NG1 6AD
4) Foxy’s, 67 Upper Parliament St, NG1 6LD
5) Flares, 51 Upper Parliament St, NG1 6LD
6) BZR, 102 Friar Lane, NG1 6EB

The Social Responsibility Standards document outlines a number of steps managers in the on-trade can take to run their premises in a responsible way. We checked the premises for the following actions as outlined in specific clauses in the Standards document:

1) Whether they offered promotions that encourage or reward the purchase or drinking of large quantities of alcohol (SRS 6.3.2);

2) Whether they had floor staff to clear away empty glasses, check the toilets and identify customers who are intoxicated or under the legal purchase age (SRS 6.5.1);

3) Whether the management display information regarding sensible drinking including alcohol content in terms of units (SRS 5.4.1).

<table>
<thead>
<tr>
<th>Venue</th>
<th>Floor staff?</th>
<th>Promotions that encourage purchasing large quantities</th>
<th>Sensible Drinking Message posted</th>
</tr>
</thead>
<tbody>
<tr>
<td>JD Wetherspoon</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Cuckamaras</td>
<td>No</td>
<td>Yes - Jugs of cocktails for £10</td>
<td>No</td>
</tr>
<tr>
<td>Walkabout</td>
<td>No</td>
<td>Yes - 8 bottles of beer for £8</td>
<td>No</td>
</tr>
<tr>
<td>Foxy’s</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Flares</td>
<td>Yes</td>
<td>Yes - Triples for price of single</td>
<td>No</td>
</tr>
<tr>
<td>BZR</td>
<td>Yes</td>
<td></td>
<td>No</td>
</tr>
</tbody>
</table>
Box 5: Interview with a bar manager:

‘James’, a bar manager in one of Nottingham’s most prestigious night-time venues describes in his own words the strategies owners and staff use to encourage greater sales:

“Nottingham’s night life caters to two types of drinker. The week nights are largely dominated by students from the city’s two universities during term time. They drink in bars and clubs largely catering for their likes which keep locals and non students out. Students generally enjoy cheaper prices than non students and take advantage of clubs offering increasingly cheap deals to secure the student pound. Clubs and bars know that if they can lure students in with promotions and offers they will keep drinking in their establishments until they go home because they’ve run out of money. To do this prices are set extremely low and profits from door costs often make up for these deals”.

“The weekend and bank holidays sees the locals come to town. There are of course variations in the type of drinker among the weekend crowd but the majority and busiest area of town is probably Market Square and the surrounding streets. The bars here are of the chain high street variety and offer cheap promotions to attract people in early doors and then hike prices when they see fit. Such a tactic does away with traditional happy hours with promotions offered at all hours and at all times of the day. This area of town is generally seen as dangerous past 10pm and is out of bounds to students wishing to avoid groups of menacing drunken young men. In my view the bars operate a pack them in and get them drunk mentality knowing that people spend everything they have in their pockets before calling it a night. There is a kind of anything goes attitude to drinking here with fights, vomiting and the police a constant spectacle”.
4. Principles and recommendations
4. Principles and recommendations

4.1 Introduction

The last two chapters of this paper established that ‘co-regulation’ of the kind that exists in England is not delivering the outcomes that the Government and the public would like to see in relation to alcohol-related harms. Indeed, alcohol-related crime and disorder show no signs of declining (Hough et al 2007).

The reasons for this are two-fold. First, the current voluntary regime allows licensees to ignore the principles set out in the codes as it suits them because there are no meaningful sanctions for those who are found to be in breach. Secondly, Government departments have not always provided local areas with sufficient resources or guidance to effectively tackle problem licensees using their considerable powers under the Licensing Act 2003.

Whilst it is welcome that Government departments have, over the past five years, introduced a series of statutory regulations requiring higher standards of practice from the licensed industry, insufficient follow through support and guidance from Whitehall have meant these initiatives are only inconsistently enforced and sustained at the local level.

As political pressure grows for a solution to the problem, the time is ripe to recast the way industry and authorities work together to reduce alcohol-related harms. The National Consumer Council has usefully itemised a number of key features that a self-regulatory regime should include to be genuinely effective (2005). This chapter will first outline some of the present barriers and opportunities to making these principles a reality, before proposing a series of specific recommendations. The NCC principles are (in condensed form):

- clear objectives
- adequate resources
- public accountability
- effective sanctions
- a dedicated, independent structure.

4.2 Key principles (barriers and opportunities)

Clear objectives

In 2007 the Government identified two key indicators to improve harm reduction efforts: a reduction in alcohol-related hospital admissions and a decline in public perceptions of alcohol-related disorder (HM Treasury 2007). The targets were also incorporated into the National Indicators Set - a group of 198 targets that local areas can select from to determine their strategic priorities for the next three years (DCLG 2007). To date, 8 (5.3%) of local strategic partnerships have chosen to prioritise the reduction in drunk or rowdy behaviour, 75 (50%) have chosen to try to reduce alcohol-related hospital admissions and 82 (54%) are aiming to cut down the number of assaults with injury (of which alcohol is estimated to be linked with half) (DCLG 2008).

In this respect these indicators, combined with local CDRP assessments of the scale of the challenge, provide a strong starting point for developing more target driven enforcement programmes at the local level. However, these targets do not link to or form part of the Licensing Act (2003) objectives for local authorities, creating mixed messages for health, community safety, licensing and trading.
standards teams. There is no objective to safeguard public health within the Licensing Act (as in Scotland) and it is not clear what sanctions, if any, will exist for authorities where these indicators show an increase in harms. Clearer strategic objectives in relation to public health in the context of licensing are therefore urgently required.

**Adequate resources**

The Elton Review has established that local authorities face a choice of breaking-even with fewer enforcement actions, or channelling extra resources from other budget streams into a more extensive enforcement strategy. Although DCMS has established a cap of £635 it has acknowledged that large premises have benefited from substantial reductions in fees through the new system. To counteract this cross subsidy from smaller to larger premises, the DCMS provided local authorities with the right to apply a ‘multiplier’ for premises in the highest rateable bands (D and E alone) whose main business was the sale of alcohol.

Unfortunately, this means the multiplier is effectively only applied to premises in town and city centres, where rents are higher, thus largely excluding suburban vertical drinking establishments and night clubs. The Elton Review also found that authorities were often stymied by differing interpretations of the legal definition of when the multiplier should be applied. The result is that only half of all premises liable for the multiplier have had it applied to them (Elton, et al, 2007). While it might be fair to ensure that the licensing regime is non-profit making, it is equally just to expect that local authorities should be able to charge the full costs of overseeing large scale premises. The current fee structure therefore means that many authorities are unable to enforce the Licensing Act adequately.

**Public accountability**

One of the greatest advantages of shifting licensing from magistrates to local authorities was the opportunity it offered for decision making to be made more accountable and transparent, and to ensure that the needs of the night-time economy were balanced against quality of life concerns for local residents. An Alcohol Concern survey carried out in 2006 asked license authorities how they had made the public aware of their rights to make representations and seek reviews. By far the commonest response was via the local authority website.

Although a wide range of other methods were identified (local media, leaflets, road shows etc) these were only pursued by a few authorities. It is a matter of concern that some authorities have missed the opportunity to consult more widely and over relied on website information as a means of consultation (Alcohol Concern 2006). It was also agreed that people from more socially disadvantaged areas are less likely and probably less able, to make representations or seek reviews. Enfield demonstrated this pattern very clearly with a marked difference in the number of representations between the more and less affluent areas (Alcohol Concern, 2006). Residents from these areas are especially unlikely to challenge licensing authority decisions in a magistrate’s court for fear of having to bear costs if their petition fails. This is bound to discourage residents from challenging licensing decisions as few individuals will be prepared to bear the financial risk.

Moreover, according to a large scale survey of licensing officials by Middlesex University only 10% of licensing authorities have local pressure groups concerned with licensing issues, further reducing the opportunity for residents to
launch appeals by pooling resources (Foster et al, 2008). It appears the Act has not, thus far, given residents the powers or influence originally envisaged and few hearings are initiated and followed through by residents, particularly those in less affluent areas.

**Effective sanctions**

Any responsible authority (the Police, Health and Safety, Trading Standards, Child Protection, the Fire Service, and Environmental Protection) or other interested party (local residents and business people) can apply for a review of a license. There is then a 28 day window during which representations from the local community are accepted. Approximately 20 working days after this a committee hearing, normally involving three councillors, takes place.

The hearing is fairly formal and it is usual for the license holder to use legal representation. The license holder has 21 days to lodge an appeal with the magistrate’s court if they are unhappy with the decision (which can include modifications to the conditions of the license, suspension of the license or revocation of the license). It is important to note that licensing reviews are not fast tracked within the courts system.

This means that it can be months before the evidence is actually heard, during all of which time the license holder is permitted to sell alcohol and alleged problems or irregularities cannot be addressed. Unless a statutory maximum time can be established between the lodging of an appeal to the magistrates and its hearing, the review process will continue to be only a limited disincentive to irresponsible practices. The present unwieldiness of the system may explain the gap between licensing reviews and test purchase failures.

There are no sanctions in place for licensees who fail to follow the principles in the Standards document, owing to their voluntary basis. However the Portman Group’s Code compliance system is one example where retailers and producers have acted to remove irresponsible practice, albeit only after it has entered the market. This system evidently is not robust enough or contains sufficient capacity to cover the whole industry market and so irresponsible practice continues to occur.

**A dedicated, independent structure**

Responsibility among public authorities for driving up standards is unnecessarily diffuse, leading to poor information co-ordination, and in some cases, an unhelpful politicisation of the issue. At the national level, the Department for Culture, Media and Sport and the Home Office have the most responsibility. The former is nominally entrusted with ensuring that the licensing framework is meeting its objectives, while the latter, working with local police forces, aims both to enforce the existing law, and identify problems through test purchasing schemes - run in collaboration with local trading standards officials.

In the case of the DCMS, work to establish whether licensing is having its intended effect is hampered by poor record keeping. Licensing authorities do not routinely keep information that would allow them to quickly identify which premises are disproportionately responsible for violence in their areas over a period of time (although work in some regions via A&E data is now beginning to rectify this). At the local level, databases of this sort would be invaluable in reviewing applications for renewing or changing licences and for enforcement action and crime prevention measures. Moreover, because licensing authorities do not share information about
enforcement action with central government it is difficult to establish whether specific regions have effective systems in place to deliver the objectives of the Act or whether companies operating nationally have the right sort of in-house policies in place to minimise harm.

### 4.3 Recommendations

In order to enable greater accountability for licensee practice and to allow the drinks industry to benefit long-term from a level playing field, the creation of a fair, independent regulatory system is required, both to encourage good practice and to deal swiftly with irresponsible licensees.

The Government (and its agencies) enjoys considerable administrative reach and so must be the natural choice to oversee an increasingly large and complex industry. This does not imply that self-regulation has no role. In an industry as complex and large as the licensed trade, the public will always depend on the good judgement of the majority of managers and owners to keep the system working properly. But self-regulation should be limited to aspects of licensing that can be realistically managed, allowing it to have greater credibility.

Alcohol Concern makes the following recommendations for the Government to consider.

1. **Establish a new, independent watchdog**
   Alcohol Concern believes that local authorities, agencies and premises would benefit from an independent watchdog body that provided both licensing officers and licensees with reliable information and guidance around their responsibilities under the Licensing Act. The organisation could be formed as a statutory non-departmental body under the auspices of more than one department (as with the Food Standards Agency) and could improve standards of retailing by encouraging industry-wide standards on training and guidance about how to write policy. Sanctions, where applicable, could also be applied by the watchdog, acting as an independent advocate for public health and community safety.

   Moreover, because the agency’s staff would develop a far clearer picture of the obstacles local agencies face, it could take over responsibility from the DCMS for revising the formal guidance accompanying the Act and ensure that it was fully alive to the main concerns that a licensing officer is likely to encounter.

   Finally, any such new body could also establish better, formal partnerships with the main trade associations for the benefit of members and non-members alike and support the establishment of local licensee forums. It could also roll out national best practice schemes that regularly celebrate the achievements of licensees who run well-managed premises.

   This body would have to be constituted under statute with full independence to enforce responsible licensee practice. Lessons can be learnt from Scotland, where there has been a stronger approach on under-age sales, promotions and training requirements and greater emphasis on maintaining licensing standards. Alcohol Concern would recommend that the Government explores different watchdog structures (Ofgem, FSA, OFCOM, Gambling Commission) to ascertain the appropriate model for the drinks industry.
2. Establish in the first instance a national alcohol enforcement team (DCMS/Home Office)
As a possible short-term precursor to setting up an independent watchdog body (see above) and in line with the proposal of the Rogers’ Review (to make alcohol licensing a national enforcement priority) this specially constituted enforcement team (comprising officials from the DCMS, Home Office and secondees from local government and enforcement agencies) would focus their attention on building capacity among the nearly thirty local authorities that report they are not confident about their ability to manage the licensing regime (Rogers 2007). Their brief would be to organise training for licensing officials on the full implications of the Licensing Act, import best practice from more successful areas and pilot new initiatives. Drawing on their frontline experiences, they would also advise the DCMS and Home Office on the drafting of new guidance documents to accompany legislation and provide clearer advice for local authorities.

3. Make the development of harm reduction policies a condition of applying for a premises (or club) license
So that local authorities have clear, formal reassurances that applicants are committed to harm minimisation, it should be made a condition of applying for a new premises license that the applicant be able to demonstrate that they will either buy in or provide in-house training for staff on responsible serving practice, develop clear disciplinary procedures for employees found to have made an illegal sale, and provide better point of sale information. Alcohol Concern would also recommend to the Government that they go beyond Standards (see page 21) and officially end the practice of Happy Hour promotions with a clear ban.

4. Review the fee setting system
To tackle the current deficit the Secretary of State for Culture, Media and Sport should review whether the current cap is appropriate and instead consider setting a more generous maximum limit. To pre-empt the situation whereby license applicants in low problem areas are forced to pay more because other local authorities face higher enforcement costs, local authorities could be empowered to set a reasonable cap based on their actual enforcement costs on the basis of a yet to be determined formula. Moreover, within authorities it is clear that some licensed premises are more likely to incur higher enforcement costs. To ensure that lower risk establishments are not penalised as a result of this Government should also consider establishing a clear sliding scale system. To safeguard against opportunism, the DCMS could retain power to approve the authority’s decision about where to set the fee limit.

5. Promote the establishment of local residents’ pressure groups among councils and raise more awareness among residents of their rights
The DCMS should encourage all local authorities to set aside a proportion of their licensing budget to fund a local residents’ licensing forum through which concerns could be addressed in a relatively informal environment. Nationally, more work is required to ensure that all sections of the community are empowered to tackle alcohol-related harms by raising awareness of residents’ rights to seek reviews and make representations. This should include the development of a leaflet all local authorities can distribute with advice on how to make representations and seek reviews.

6. Fast track licensing appeals
So that the conclusions of a licensing committee
hearing are not unnecessarily delayed because of a lengthy waiting time before the magistrate hears the appeal, the Ministry of Justice, working with the DCMS, should amend relevant existing legislation to stipulate a maximum waiting time between a committee’s review decision and any appeal in a magistrate’s court. In cases where the licensee wishes to take the case to a higher court if they are unhappy with a magistrate’s ruling, any conditions that were imposed during the review hearing should at least be temporarily applied while the parties await a hearing date.

4.4 Conclusion

Alcohol Concern believes a thriving, economically viable drinks industry has benefits for the economy and consumers who choose to drink safely. However, the incentive for profit must never be at the expense of individual drinkers, those affected by alcohol misuse or communities in general. In order for a ‘new deal’ to be struck between the Government, the industry and consumers there must be safeguards in place to hold industry accountable for its actions. In a self-regulated market, poor industry practice has for too long been allowed to contribute to alcohol harms. The Government has a unique opportunity to introduce a new regulatory regime, which enables it to meet its own targets to reduce alcohol harms. Any failure to do so will be a missed opportunity and a costly one.
5. References


Alcohol Concern (2008) *Licensing Act 2003: A Lopsided Policy (The need to incorporate a health objective in local licensing decisions)*. London: Alcohol Concern


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Alcohol Concern is
- The national agency on alcohol misuse
- Working to reduce the level of alcohol misuse, and to develop the range and quality of helping services available to problem drinkers and their families
- England’s primary source of information and comment on a wide range of alcohol related matters

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