

**Report of the**

**Government Alcohol Advisory Group,**

**31 March 2008**

# Report of the Government Alcohol Advisory Group

## Summary of recommendations

In January 2008, the Minister for Justice, Equality and Law Reform announced his intention to bring forward proposals for changes in the law on the public order aspects of the sale and consumption of alcohol with a view to enacting the required legislative changes before the summer recess. He also announced the establishment of the Government Alcohol Advisory Group and said that he had asked it to examine the following key issues and to report to him with their assessment on the best way forward by 31 March 2008:

- the increase in the number of supermarkets, convenience stores and petrol stations with off-licences and the manner and conditions of sale of alcohol products in such outlets, including below unit-cost selling and special promotions;
- the increasing number of special exemption orders which permit longer opening hours which are being obtained by licensed premises around the country; and
- the use, adequacy and effectiveness of existing sanctions and penalties, particularly those directed towards combating excessive and under-age alcohol consumption.

The recommendations which follow are intended to respond to these terms of reference. The Group expects that certain of these recommendations will provide the basis for the urgent reforms which the Minister intends to implement in the short term. Structural reform of the licensing system is more likely to be addressed in the context of the forthcoming Sale of Alcohol Bill which is included in the Government Legislation Programme for 2008. It is intended that this codification bill will modernise and streamline all the laws relating to the sale and consumption of alcohol.

### **General**

1. The Group recommends that the specific properties of alcohol be recognised in public policy-making, and that the consequences which flow from that recognition be taken into account in decision-making across the public policy spectrum.
2. The Group also recommends the development and implementation of an overall national strategy on alcohol in order to ensure a consistent and coherent approach to alcohol-related matters across Government departments and other public bodies.

### **Sale of alcohol**

3. The Group recommends that applicants for a wine-retailer's off-licence be required to produce a District Court Certificate to the Revenue Commissioners.
4. The Group recommends that the grounds on which objection may be made to the grant of District Court Certificates for spirit, beer and wine off-licences be extended to include the suitability of licensed premises for the needs of local residents and the adequacy of the existing number of licensed premises in the neighbourhood.

Recommendations 3 and 4 are intended to ensure that local residents and the Gardaí have an opportunity to object to the grant of an off licence on the grounds that there are already a sufficient number of premises with off licences in the neighbourhood concerned.

5. The Group recommends that off-sales of alcohol be permitted only between the hours of 10.30 a.m. and 10.00 p.m., including Sundays in the case of off-licences and mixed trading premises.

Off sales of alcohol should only be permitted between 10.30 a.m. and 10.00 p.m.; this change will also involves repeal of the existing provision which permits mixed trading premises (but not specialist off-licences) to sell alcohol between 7.30 a.m. and 10.30 a.m.

6. The Group recommends introduction of physical separation of alcohol products from non-alcohol products in mixed trading premises on the following lines:
  - Where it is not possible to create separate premises with public access from outside the building, alcohol sales should be confined to one specified area in the premises: this area should be separated from the rest of the premises by a solid wall or other similar barrier;
  - Movement between the specified area and the rest of the premises should be possible through a door, gate or turnstile; the public must, however, have access to the rest of the premises without having to pass through the specified area;
  - Any person purchasing alcohol may only do so at a counter or point of sale within the specified area (sales of non-alcoholic beverages would also be permitted within this area);
  - Whatever its location, the Gardaí must have access to the specified area at all times.

Recommendation 6 is intended to ensure that the display and sale of alcohol is physically separated from the display and sale of grocery products in supermarkets, convenience stores and petrol stations.

7. The Group recommends that adequate staff training standards be introduced and that the grant and renewal of licences be made conditional on compliance with such standards.
8. The Group recommends that the minimum age for selling alcohol in off-licences and mixed trading premises be increased to 21 years.

9. The Group recommends that provisions permitting the employment of 16 and 17 year olds in bars of licensed premises be reviewed in the context of the forthcoming Sale of Alcohol Bill.
10. The Group recommends that all licensees promote awareness and use of the Garda age card by demanding production of that card in preference to other forms of identification.
11. The Group recommends enactment of a statutory provision to permit test purchasing of alcohol by persons under the age of 18 years, subject to necessary safeguards, with a view to promoting compliance with licensing law.

Recommendation 11 is intended to improve enforcement of the law by permitting test purchasing of alcohol by under-18s subject to adequate safeguards; this will permit the Gardaí to target better enforcement operations.

12. The Group recommends that the District Court, having regard to any views expressed by the Gardaí, be permitted to insist upon a CCTV system as a condition for the grant of a certificate, or renewal of a licence, in respect of an off-licence or mixed trading premises, as the case may be.

Recommendation 12 is intended to assist in dealing with situations where under-age persons gather in the vicinity of off-licences and mixed trading premises with a view to pressurising persons over 18 to purchase alcohol for them. It is hoped that the presence of a CCTV system will discourage such practices.

13. The Group recommends that voluntary pilot projects be undertaken in co-operation with local Gardaí to assess the value of labelling alcohol containers with details of the outlet of sale for the purposes of enforcement of licensing law.
14. The Group recommends that the Gardaí target dial-a-can and similar delivery services with a view to prosecuting offending licensees.

Dial-a-can and similar services which involve payment on delivery of alcohol products are illegal and the offending licensed premises should be targeted and prosecuted.

15. The Group recommends that—

- alcohol products be priced and sold on the basis of a unit price; this means that the promotion, supply or sale of any alcohol free of charge or at a reduced price on the purchase of one or more units of the product, whether for consumption on or off the premises, should be prohibited;
- the award of bonus points or loyalty card points or any other benefit on sales of alcohol products, and the use of any such points or benefits, directly or indirectly, for the sale at a reduced price of alcohol or any other products should be prohibited;
- promotional or advertising materials may only contain the unit price of the product and may not mention any other price or any reference to sale at a reduced price;
- promotional and advertising materials in mixed trading premises should only be displayed in the specified area where alcohol is exposed for sale.

Recommendation 15 is intended to prohibit alcohol promotions and sales involving price discounts, ‘2 for 1’ type offers etc.; the awarding and use of bonus points, loyalty card points and other benefits on alcohol sales; and to restrict the location of advertising materials within supermarkets, convenience stores and petrol stations.

### **Extended trading hours**

16. The Group recommends that the grant of special exemption orders<sup>1</sup> to nightclubs be made subject to compliance with fire safety standards and in each case to determination by the Court of maximum occupancy levels for the premises concerned.
17. The Group recommends that a review of the Public Dance Halls Acts be undertaken urgently in order to examine the criteria applicable to the grant of such licences by the District Court.
18. The Group recommends that the grant of special exemption orders to late bars also be made subject to compliance with fire safety standards and in each case to determination by the Court of maximum occupancy levels for the premises concerned.

Recommendations 16 and 18 are intended to ensure that the grant of special exemption orders to premises operating as nightclubs and late bars are subject to compliance with fire safety standards. Recommendation 17 calls for a review of the criteria for granting such licences since it appears that premises operating as late bars rather than nightclubs are currently eligible for such licences.

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<sup>1</sup> Special exemption orders permit on-licensed premises to remain open during the additional period and for the purposes of the special occasion specified in the order.

19. The Group recommends that the current statutory limit of 2.30 a.m. be replaced with 2.00 a.m., while retaining the District Court's discretion to grant orders for shorter periods.
20. The Group recommends that the District Court should not grant a special exemption order for any premises unless satisfied that the special occasion will be conducted in a manner that will not—
  - cause undue inconvenience or nuisance to persons residing in the locality, or
  - create an undue threat to public order or safety there.
21. The Group recommends that the making of special exemption orders in respect of special events to which the public are admitted be made conditional on the premise having an adequate, and fully operational, CCTV system.

Recommendations 19, 20 and 21 are intended to combat and reduce nuisance and public disorder in the vicinity of premises which seek to obtain special exemption orders and to assist the Gardaí in their enforcement of public order provisions.

22. The Group recommends that the trading hours applicable to premises with theatre licences be made subject to the general time limits applicable to premises with on-licences and that holders of such licences be permitted to apply to the District Court for special exemption orders.

Recommendation 22 is designed to tackle the proliferation of theatre licences which permit premises with such licences to operate beyond normal trading hours without having to obtain special exemption orders from the District Court.

23. The Group recommends the repeal of statutory provisions relating to the granting of general exemption orders which permit early opening for premises located in the vicinity of fairs and markets.

The justification for permitting licensed premises located in the vicinity of fairs and markets to open early was to provide food and refreshment for persons engaged in such activities from early in the morning. This is no longer relevant and there appears to be no continuing need for such facilities.

### **Sanctions, penalties and enforcement**

24. Fines for offences involving drunkenness, disorderly conduct and the provision of alcohol to under-age persons should be increased towards maximum District Court levels.
25. A minimum closure period of 2 days should apply in the case of temporary closure orders for a first offence.

Recommendations 24 and 25 are intended to increase the penalties relating to the provision of alcohol to under-age persons and drunkenness and disorderly conduct. A minimum closure period of 2 days is also proposed.

26. The Group recommends that non-uniformed Gardaí be deployed in order to detect and prosecute the offences of permitting drunkenness and disorderly conduct in licensed premises.

Many persons who are prosecuted for intoxication in a public place and disorderly conduct under sections 4 and 5 of the Criminal Justice (Public Order) Act 1994 are already drunk or disorderly when leaving licensed premises. Non-uniformed Gardaí should be deployed to detect and prosecute the offences of permitting drunkenness and disorderly conduct on such premises.

27. The fixed penalty procedure for offences under sections 4 and 5 of the Criminal Justice (Public Order) Act 1994 should be implemented as soon as possible.

Section 184 of the Criminal Justice Act 2006 permits the imposition of fixed charge penalties for offences involving intoxication or disorderly conduct in a public place as an alternative to court proceedings. The procedure will be somewhat similar to the fixed penalty procedure already applicable to certain road traffic offences, i.e. court proceedings can be avoided on payment of a prescribed fine.

28. A review of the operation of the Criminal Justice (Public Order) Act 2003 should be undertaken with a view to identifying its shortcomings and improving its effectiveness.

Prosecutions taken by the Gardaí under this Act have not been successful and, therefore, a review of its operation needs to be undertaken.

29. Local authorities that have not already made bye laws prohibiting the consumption of alcohol in public places under Part 19 of the Local Government Act 2001 should do so with a view to preventing alcohol-related public disorder in their areas.

30. The closing times of non-licensed premises, e.g. fixed or mobile food outlets should also be regulated where necessary in local authority bye laws under Part 19 of the Local Government Act 2001.

Recommendations 29 and 30 are directed towards local authorities which have the power to make bye laws prohibiting alcohol consumption in public places and regulating other activities in their areas. Under section 35 of the Garda Síochána Act 2005, local authorities are involved in joint policing committees and the making of appropriate bye laws is an instrument available to them to assist in combating public disorder and anti-social behaviour.

31. The Garda Commissioner should appoint an officer in each Garda area with responsibility for monitoring and co-ordinating enforcement of the licensing laws and related initiatives in that area; overall consistency of approach across the country should be monitored

## **Chairman's Foreword**

This Group was established by the Minister for Justice, Equality & Law Reform to advise Government on certain matters relating to the sale and consumption of alcohol with a particular focus on the effect alcohol had on public order offences. The membership of the Group is set out in the first appendix to this Report.

We embarked on our task in the knowledge that the Minister for Justice, Equality & Law Reform plans to bring a comprehensive Sale of Alcohol Bill before the Oireachtas later this year which will codify the liquor licensing laws. Such a codification has been recommended by various commissions which examined the relevant legislation.

It was clear that the Minister, in addition to publishing a comprehensive Bill codifying all licensing matters later this year, wished to have some of the more obvious shortcomings in present legislation dealt with as a matter of urgency. He was not prepared to wait any longer, but wished to have a number of reforms enacted without delay. The task enjoined upon us therefore was to deal with these immediate issues, and to make recommendations to the Minister thereon.

There are other issues that cannot be dealt with as a matter of immediacy, could not therefore form part of the specific recommendations that we make in this Report. However, these issues must be part of a comprehensive series of actions designed to tackle the problems that presently exist. A more consistent and co-ordinated approach to alcohol related problem is required across the Government system.

The culture of binge drinking in this country has grown up over a number of years. It obviously cannot then be altered by one single document or by one series of regulatory or legal alterations.

It requires basically a change of attitude. Laws alone will not do this. The very ethos must be changed. This will require a concerted effort from all.

Is it impossible? Well the answer is that the Government successfully targeted smoking to great beneficial effects on the health of the nation.

There is no doubt that the attitude to driving with drink consumed has altered over the last few years and people are now far more mature in their attitudes to drink driving than they were ten or fifteen years ago. In both cases the ethos has changed and so it would seem that, though there is great work to be done, the same concerted approach to alcohol misuse would bring the same results.

The type of binge drinking with which we were primarily concerned was that which led to distasteful incidents at night that have caused so much human distress. That type of binge drinking is an attitude of mind where mainly young people go out at night, and measure the success of their evening by how drunk they manage to get.

Happily the vast majority of young people show great wisdom in this respect. However, the incidents on our streets in the early hours of the morning are, for the most part, caused by young people coming out of pubs, discos, nightclubs, etc., and frequenting fast food centres. The resultant rows are fuelled almost exclusively by the amount of alcohol involved.

Whilst our recommendations go beyond the public order effects in many respects, nonetheless addressing binge drinking and its effects remained our prime concern and is the type of activity that was our target.

It must not be thought that alcohol misuse is solely the prerogative of the young. It is not, but the public order incidents unfortunately are. We are very impressed by the attitude of the organisations which represent students, youth bodies, etc. and who, by their submissions, have shown a most mature approach to the problems.

There were many matters on which submissions were made to us that were outside our terms of reference. Some others proved to be inoperable. It was suggested, for example, that younger people be allowed consume low alcohol beer in licensed premises. We could not take this on board because of the difficulty in enforcement. The organisations also went on to make strong and persuasive arguments regarding the type of education young people receive. They should be taught to stand on their own two feet and not be subject to improper peer pressure. This point was repeated when I, as Chairman, appeared before the Oireachtas Joint Committee on Justice, Equality, Defence and Women's Rights. Many members of the Oireachtas echoed these points drawing on the knowledge they had gained from their constituencies throughout the country. These are matters that will fall to be dealt with elsewhere, but they are important and positive suggestions.

The Group also gave consideration to recommending that the purchase of spirits or drinks with a high alcohol content should not be permitted to anyone under 21. However, this presented difficulties in that 18 year olds are allowed marry, enter into mortgages and indeed vote for their favourite politicians. They pay taxes like anyone else, and such a recommendation would add another dimension to enforcement. Whilst the arguments in favour have obvious attractions, the Group decided against making any recommendation in its favour under all the circumstances.

Similarly we were amazed by the cost of soft drinks in licensed premises. Again we cannot make a recommendation on this, but it is surely a matter that requires close consideration from the Department of Enterprise, Trade and Employment and, indeed, from the Competition Authority. We had evidence that a pint of a rock shandy costs more than a pint of stout or beer in a licensed premises. This seems artificially high and is surely a matter that is worthy of the closest enquiry. However, it was outside our remit. The high cost of water has also been highlighted in the media recently.

The public at large, who made many submissions to us, were particularly concerned with the enforcement issue – enforcement both by the Gardaí and enforcement in the Courts. We have been able to make recommendations which will ease these matters for the Gardaí and we have no doubt that the judiciary will be conscious of the importance of demonstrating to the public that offenders meet with a proportionate and consistent response.

If there is not a concerted effort to erode the ethos of binge drinking and its consequences then all efforts will fail. Years ago medical evidence suggested that the consumption of alcohol moved a person first to be jocose, then to be bellicose and thereafter to be comatose. On the following morning the person was lachrymose to complete the cycle. It was the poet Lord Byron, himself well versed in the subject, who referred to “sermons and soda water the day after”.

I would like to make it quite clear that the Group was not in any way anti-alcohol and has no difficulty with moderate consumption of alcohol. It is the misuse of alcohol that must be at all times stopped.

Persons who drink to excess in their own homes may do themselves harm. As things have developed recently they can also cause serious harm to others. It is not only on the streets that the consequences of excess alcohol consumption are seen.

Perhaps our most important recommendation is that alcohol should be regarded as a substance on its own the enjoyment of which, in moderation, is not harmful but the misuse or abuse of which is disastrous. As a substance it is therefore unique and must be treated accordingly.

The culture of binge drinking has grown up over a number of years and has become quite ingrained. A start must be made in ending that culture.

The Minister's task, in attempting to change an ethos that has been brought about by the very economic success which Ireland has enjoyed is a serious and a daunting one. Nonetheless the very impatience with which he has approached it is refreshing. If, in this Report, we have helped in some way, then it has been our pleasure so to do.

DR GORDON HOLMES

Chairman

The Government Alcohol Advisory Group

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## Chapter 1 – Introduction

- 1.1. The Minister for Justice, Equality and Law Reform, Mr Brian Lenihan, T.D., announced on 9 January 2008 that he intended to bring forward proposals for changes to the law on the public order aspects of the sale and consumption of alcohol with a view to enactment of the legislation before the Summer recess. He also announced the establishment of the Government Alcohol Advisory Group and said that he had asked the Group to report to him with their assessment on the best way forward by 31 March 2008.
- 1.2. The Group was asked to examine the following key issues in this context:
  - the increase in the number of supermarkets, convenience stores and petrol stations with off-licences and the manner and conditions of sale of alcohol products in such outlets, including below unit-cost selling and special promotions;
  - the increasing number of special exemption orders which permit longer opening hours which are being obtained by licensed premises around the country; and
  - the use, adequacy and effectiveness of existing sanctions and penalties, particularly those directed towards combating excessive and under-age alcohol consumption.
- 1.3. When announcing establishment of the Group, the Minister also signalled that work would continue on the drafting of a comprehensive Sale of Alcohol Bill as provided for in the Government Legislation Programme for 2008. This Bill will modernise and streamline the laws relating to the sale and consumption of alcohol by repealing the Licensing Acts 1833 to 2004, as well as the Registration of Clubs Acts 1904 to 2004, and replacing them with updated provisions. The proposals contained in this Bill will take account of structural reforms to the licensing system and other recommendations set out in earlier reports of the Commission on Liquor Licensing and the Strategic Task Force on Alcohol.
- 1.4. In view of the Minister's stated intention to secure enactment of urgent reforms in the short-term, and with the prospect of significant reform of the licensing system in the medium-term, the Group has concentrated in its deliberations on identifying pressing issues and formulating appropriate proposals. More complex issues, which require further consideration, can be addressed in the Sale of Alcohol Bill.

### Methodology

- 1.5. Despite the limited time available to it, the Group was anxious to obtain the views of interested parties and individuals. A public advertisement calling for submissions was placed in the Sunday newspapers of 13 January 2008 and in the national daily papers on Monday, 14 January 2008<sup>2</sup>. The call generated a total of 188 submissions from interest groups and individuals a number of which were received by the Minister for Justice, Equality and Law Reform and forwarded to the Group for consideration.
- 1.6. The Group wishes to thank all those who took the time and trouble to submit their views and suggestions for reform. The submissions covered a broad range of issues, some of

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<sup>2</sup> The text of the public advertisement is included in Appendix 2

which went beyond the Group's terms of reference. As expected, a great diversity of perspectives on key issues emerged from the submissions which were received. This was of considerable benefit to the Group since it ensured that a broad spectrum of views and issues were brought to its attention. All the submissions have been considered by the Group in its deliberations, but for reasons of economy and brevity the chapters which follow do not make specific reference to any submissions. A full list of submissions received is included in Appendix 3.

- 1.7. Additional views and data were sought on a number of matters which the Group was examining and meetings with certain organisations and interests were arranged for this purpose. A list of the organisations and individuals involved is included in Appendix 4. The Group also had a very useful exchange of views on 4 March with the Social Partnership Working Group on Alcohol Misuse, chaired by Mr Peter Cassells. Representatives of the Group also met with officials from the Department of Enterprise, Trade and Employment.

### **Alcohol not an ordinary product**

- 1.8. From the outset, the Group took the view that alcohol should not be regarded as an 'ordinary' product. It is concerned therefore that alcohol products are increasingly displayed for sale beside food products and non-alcoholic drinks on supermarket shelves, in convenience stores and in petrol stations. The Group believes that increasing availability leads to increased competition between retailers and to promotional and pricing practices which encourage increased consumption of alcohol. And while competition between retailers may generally contribute to economic efficiency and benefit the consumer, the harm and damage that can result from alcohol misuse must also be taken into account.
- 1.9. Alcohol differs from other products to the extent that the sale of alcohol products requires a licence, which in most cases requires a certificate from either the District Court or Circuit Court. Sale of alcohol products is permitted only at certain times specified in law; alcohol may only be sold to persons aged 18 or over, and to those who are not drunk. In short, licensing law is a recognition that restrictions are required to limit and control the availability of alcohol and to protect people, especially vulnerable groups, from alcohol-related harm. The Group considers that this needs to be recognised in the development and implementation of policies across the public policy spectrum.
  - **The Group recommends that the specific properties of alcohol be recognised in public policy-making and that the consequences which flow from that recognition be taken into account in decision-making across the public policy spectrum.**
- 1.10. The Group believes that Ireland's high level of alcohol consumption coupled with the tendency of many to engage in binge drinking (see chapter 2) is of great concern. High levels of alcohol consumption are leading to alcohol-related harm and to public disorder. The recommendations contained in this Report will, if implemented, reduce the level of public disorder arising from alcohol consumption. However, an overall national strategy on alcohol is required in order to ensure a comprehensive and coherent approach to addressing alcohol-related issues.
- 1.11. Several Government Departments and other public bodies are responsible for policy areas which bring them into contact with alcohol-related matters, e.g. health, education,

sport, taxation, youth, transport, tourism, consumer protection, competition, etc. In the absence of an agreed overall strategy framework, the relevant Departments and public bodies can sometimes adopt diverging views on such matters and pursue diverging, perhaps even conflicting, priorities. The Group believes that the establishment of such an overall strategy is now an urgent priority.

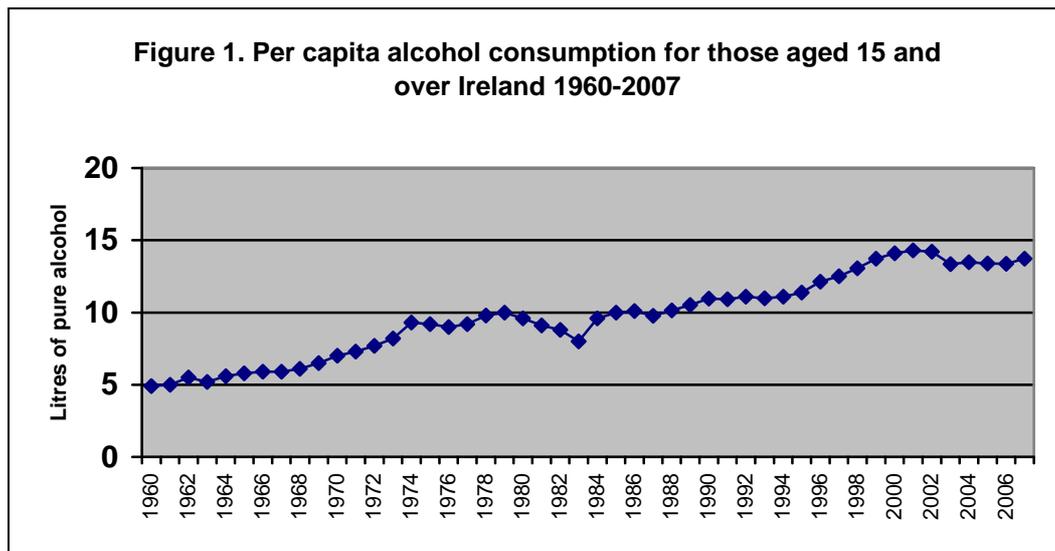
- **The Group recommends the development and implementation of an overall national strategy on alcohol in order to ensure a consistent and coherent approach to alcohol-related matters across Government Departments and other public bodies.**

### **Parental and personal responsibility**

1.12. While the State has an essential role to play in combating alcohol-related harm through appropriate legislation and the provision of various services, parental and personal responsibility are also essential requirements if efforts to combat such harm are to be successful. Parents need to be aware not only of the risks of alcohol-related harm but the example which their own behaviour provides within the family environment. Likewise, the importance of personal responsibility in relation to alcohol consumption, especially in the case of adults, cannot be overlooked.

## Chapter 2 – Alcohol consumption, public health and public order

2.1 Alcohol consumption in Ireland has increased significantly over recent decades. This can be seen from Figure 1 which traces per capita consumption of alcohol for those aged 15 and over from 1960 to 2007. There has been a marked rise in consumption levels from the mid-1990s which peaked in 2002 at 14.2 litres of pure alcohol per person. The overall consumption rate decreased to 13.36 litres by 2006 but appears to have increased again in 2007 to 13.72 litres.



2.2 Table 1 below outlines consumption in recent years for those aged 15 and over broken down according to the different categories of alcohol products. Average consumption of pure alcohol per person over 15 years of age in 2007 was 13.72 litres. This represents an increase of 2.7% compared with 2006 (13.36 litres). Spirits and wine account for this increase. These figures mean that each person aged 15 and over consumes an average of 20.8 standard units of alcohol per week. Since the recommended maximum weekly consumption levels are 14 units for women and 21 for men, this means that many people are drinking more than the recommended limits. When account is taken of the fact that about 20% of adults do not consume alcohol at all, the amount consumed by those who do is even greater and this increases the likelihood of alcohol related harm and public order offences.

**Table 1 – Alcohol consumption by category**

<b>Year</b>	<b>Beer</b>	<b>Spirits</b>	<b>Wine</b>	<b>Cider</b>	<b>Total</b>	<b>% annual change</b>
1995	7.58	2.12	1.06	0.63	<b>11.38</b>	<b>2.49</b>
1996	7.89	2.30	1.26	0.69	<b>12.14</b>	<b>6.60</b>
1997	8.04	2.37	1.34	0.77	<b>12.53</b>	<b>3.23</b>
1998	8.22	2.44	1.53	0.87	<b>13.06</b>	<b>4.27</b>
1999	8.25	2.75	1.72	1.00	<b>13.72</b>	<b>5.02</b>
2000	8.05	3.04	1.87	1.13	<b>14.09</b>	<b>2.71</b>
2001	7.93	3.08	2.06	1.23	<b>14.30</b>	<b>1.51</b>
2002	7.71	3.17	2.27	1.07	<b>14.22</b>	<b>-0.59</b>
2003	7.39	2.49	2.41	1.06	<b>13.35</b>	<b>-6.12</b>
2004	7.19	2.51	2.71	1.06	<b>13.48</b>	<b>1.00</b>
2005	7.04	2.51	2.75	1.09	<b>13.40</b>	<b>-0.63</b>
2006	6.83	2.57	2.87	1.09	<b>13.36</b>	<b>-0.26</b>
2007	6.79	2.75	3.09	1.09	<b>13.72</b>	<b>2.69</b>

*Source: Revenue Commissioners and Central Statistics Office, Annual Reports*

2.3 Ireland has one of the highest levels of alcohol consumption in the European Union. In 2006 alcohol consumption levels here were about 30% higher than the EU average<sup>3</sup>.

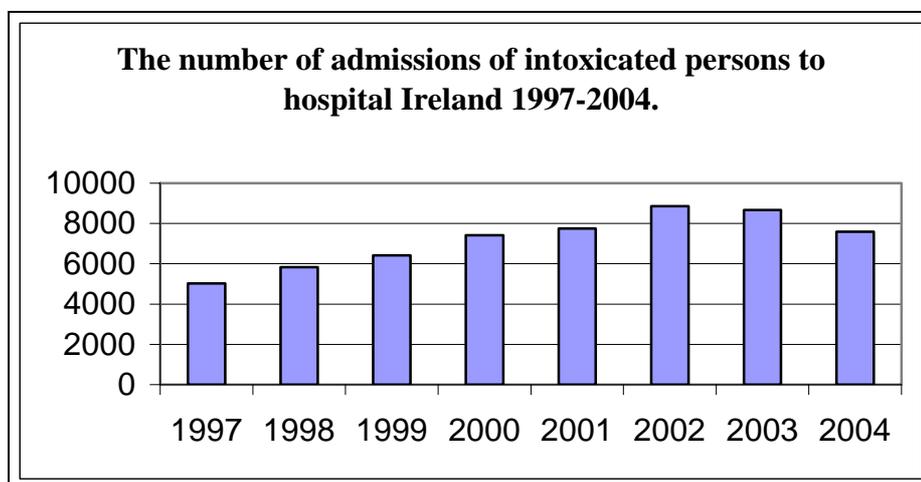
## **Binge drinking**

2.4 In addition to high consumption levels, Ireland also has a particular problem with binge drinking. It may be useful to consider binge drinking as a cultural attitude to alcohol consumption. Thus ‘going out to get drunk’ would be considered to be one of the hallmarks of binge drinking as would ‘pre-loading’, a term used to refer to the consumption of alcohol before going out. The short-term public consequences of binge drinking include public disorder. Other consequences associated with binge drinking include accidents and injuries, suicide, loss of productivity and absenteeism. These consequences affect not only the individual concerned but also their families and communities. Men tend to engage in binge drinking to a greater extent than women and this is reflected in the fact that men are more likely to be involved in alcohol-related violence, suicide and road deaths.

<sup>3</sup> Hope, A. (2007) *Alcohol consumption in Ireland 1986-2006*. Health Service Executive – Alcohol Implementation Group

- 2.5 Binge drinking is more common in Ireland than in other EU countries. The Eurobarometer survey<sup>4</sup> published in 2007 indicated that 34% of Irish drinkers consumed at least five drinks per occasion. In comparison, just 10% of the EU population reported consuming five or more drinks in one sitting. Furthermore, when asked about the frequency of consuming five or more drinks on one occasion in the past year, 28% of Europeans stated they did so at least once a week, compared to 54% of respondents in Ireland. This was the highest figure recorded for any country surveyed. Ireland emerged with the lowest level of daily drinkers but the highest level of binge drinkers.
- 2.6 The high level of alcohol consumption and intoxication is also reflected in admissions to hospitals. Figure 2 contains data extracted from the Hospital Inpatient Enquiry system (HIPE). The number of persons admitted to hospitals intoxicated or drunk rose to peak in 2002 in line with the peak in alcohol consumption. The increase in admissions between 1997 and 2002 was 76%.

**Figure 2**



## Young people

- 2.7 The 2006 national study of health behaviour in school aged children found that half of the children (aged 15-17 years old) reported being current drinkers and just over a third reported having been 'really drunk' in the last 30 days<sup>5</sup>. The ESPAD Report 2004 confirmed that young people have little difficulty in obtaining alcohol: it found that 86% and 79% of 15 and 16 year old students perceived the availability of beer and spirits respectively to be 'very easy' or 'fairly easy'<sup>6</sup>.

<sup>4</sup> TNS Opinion & Social (2007) *Attitudes towards alcohol*. Special Eurobarometer 272. Brussels: European Commission

<sup>5</sup> The Irish Health Behaviour in School-aged Children (HBSC) Study 2006, Health Promotion Research Centre, NUI Galway (August 2007).

<sup>6</sup> The ESPAD report 2003. Alcohol and other drug use among students in 35 European countries. ESPAD, Sweden, 2004.

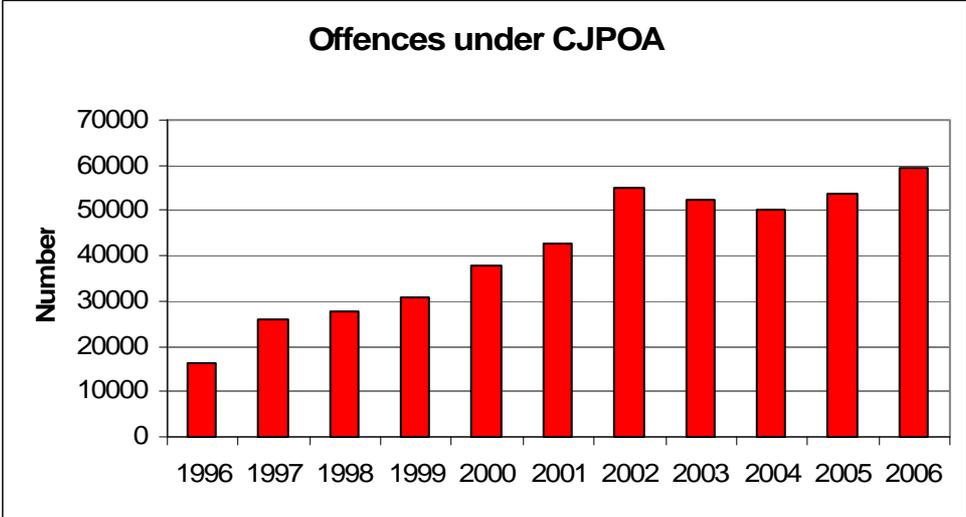
2.8 The Health Research Board’s review of the health consequences of alcohol<sup>7</sup> reported that

“... this high level of alcohol consumption has been accompanied by a parallel increase in the incidence of alcohol-related crime among juveniles (under 18s). Between 2000 and 2005 there was a 135% increase in juvenile alcohol-related offences (An Garda Síochána annual reports). In 2005, 4,217 alcohol-related offences were committed by juveniles, accounting for 20% of all juvenile offences. Of these, 1,536 related to the purchase, possession or consumption of alcohol, while 2,628 pertained to intoxication in a public place. In 2000, the corresponding figure for alcohol-related crime was just 1,793 and comprised 12% of all juvenile offences.”

**Public Order Offences**

2.9 Figure 3 shows that the overall number of proceedings taken under the Criminal Justice (Public Order) Act 1994 (CJPOA) rose steadily until 2002 and then fell for two years before rising again.<sup>8</sup> The largest number of proceedings each year are for intoxication in a public place (section 4 offences), i.e. 40.8% in 2006. This is followed by abusive and threatening behaviour (section 6 offences), i.e. 37.1% in 2006 and failure to comply with Garda direction (section 8 offences), i.e. 10.9% in 2006. Most proceedings (around 60% in recent years) are taken outside Dublin.

**Figure 3**



Source: An Garda Síochána

2.10 The number of proceedings taken depends on a combination of three factors: the extent to which this kind of activity is prioritised by the Gardaí; public tolerance of drunkenness and disorder; and changes in the underlying level of such behaviour. Thus, an upward trend does not necessarily imply an increase in disorder.

<sup>7</sup> Mongan D, Reynolds S, Fanagan S and Long J (2007) Health-related consequences of problem alcohol use. Overview 6. Dublin: Health Research Board.

<sup>8</sup> Data for 2006 were provided by An Garda Síochána and are provisional. There are some discrepancies between the Garda data and those available from the Central Statistics Office. Given the short time-frame within which the Group was asked to report it was not possible to reconcile these differences fully and a more detailed exploration of the available statistical information is awaited.

2.11 Another index of the level of public disorder is the number of proceedings taken in minor assault cases. Figure 4 indicates that this peaked in 2002 at more than 10,000, and has declined since then. This drop has taken place against the background of a growing population and an increase in the annual number of visitors to the country.

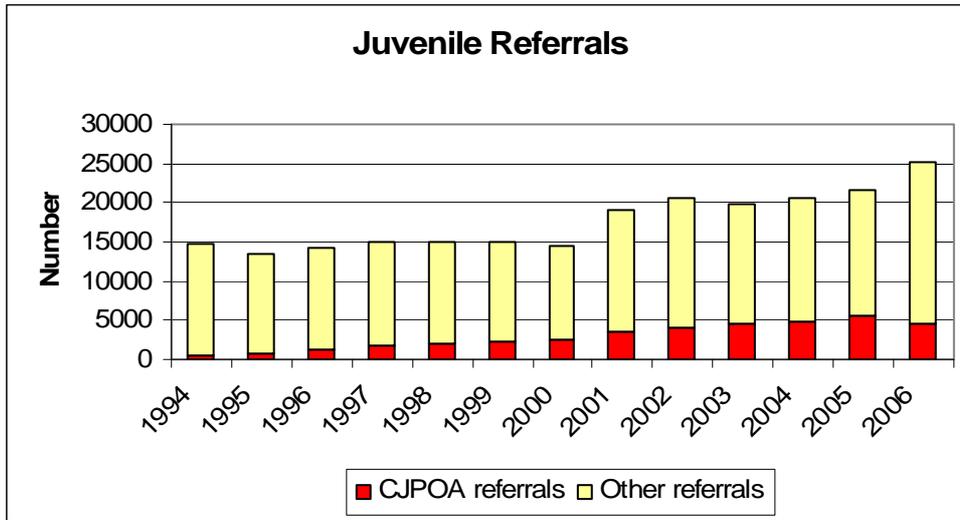
**Figure 4**



*Source: An Garda Síochána*

- 2.12 It is difficult to identify the precise nature of the linkages between each of the Group’s first two terms of reference and public disorder. There are two conceptually distinct issues involved here. The first is the relationship between alcohol, violent crime and street disorder, which is difficult to dispute. The second is the relationship between crime and the number and type of outlets selling alcohol products. The situation in this regard is less clear cut as the marked increase in the variety of licensed premises has not been matched by a parallel trend in overall alcohol consumption.
- 2.13 Perhaps the increased number of outlets where alcohol can be purchased, and a shift away from consumption in public houses towards off sales and home consumption, has had an effect in terms of drink driving, domestic violence, neighbour disputes and so forth rather than impacting directly on levels of disorder on the streets. In other words, there is a possibility that some alcohol-related crime has been displaced.
- 2.14 Public order offences account for much of the increase in the number of referrals to the Garda Juvenile Office (see Figure 5). The Group acknowledges the importance of diverting young people from the criminal justice system and endorses the work of the Juvenile Liaison scheme.
- 2.15 Admission to the Juvenile Diversion Programme is covered under Part 4 (Sections 17-51) of the Children Act 2001. Persons under 18s may be admitted to the Juvenile Diversion Programme if they accept responsibility for their anti-social behaviour and consent to be cautioned and, where appropriate, supervised by a Juvenile Liaison Officer (JLO).

**Figure 5**



Source: An Garda Síochána

2.16 The number of referrals to the Juvenile Diversion Programme for alcohol related offences for the period 2005 - 2007 is shown in Table 2.

**Table 2**

<b>Year</b>	<b>Formal Caution (Supervision Mandatory)</b>	<b>Informal Caution (Supervision not Mandatory)</b>
<b>2005</b>	412	2,834
<b>2006</b>	575	3,272
<b>2007</b>	683	3,695

Source: An Garda Síochána

2.17 The Juvenile Diversion Programme is believed to be highly successful in diverting young persons away from crime by offering guidance and support to them and their families. It also facilitates referral to the Garda Youth Diversion Projects which operate separately from the Programme and aim to divert young people away from crime and anti-social behaviour. These Projects are community-based, multi-agency crime prevention initiatives which seek to divert young people from becoming involved, or further involved, in anti-social or criminal behaviour. There are currently about 100 of these Projects operating throughout the country and it is intended that this number will be increased to 168 in line with the commitment in the Agreed Programme for Government.

## Chapter 3 – Sale of Alcohol

3.1 The Group has been asked to examine the increase in the number of supermarkets, convenience stores and petrol stations with off-licences and the manner and conditions of sale of alcohol products in such outlets, including below unit-cost selling and special promotions. This is not an easy task in light of the many complexities involved and the limited time available. Nevertheless, the Group is confident that implementation of the recommendations set out in this chapter will assist in tackling the greater visibility, accessibility and availability of alcohol and in turn assist in combating the risk of public disorder and alcohol-related violence.

### Off-licences

3.2 While the term ‘off-licence’ is used in a general way to refer to the authorisation which permits licensed premises to sell alcohol for consumption off the premises, licensing law makes provision for different categories of off-licence which permit sale of the type of alcohol specified in the licence. The principal categories are as follows:

- spirit retailer’s off-licence (spirit grocer’s licence) which authorises the retail sale of spirits; a District Court certificate is required in order to obtain such a licence;
- beer retailer’s off-licence which authorises the retail sale of cider as well as beer; a District Court certificate is also required to obtain this licence; and
- wine retailer’s off-licence which authorises the retail sale of wine; this can be obtained from the Revenue Commissioners without any court certificate.

3.3 The term ‘off-licence’ is also used to describe the premises from which alcohol is sold for consumption off the premises only. It should be noted, however, that premises with on-licences are also permitted to sell alcohol for consumption off the premises. In this Report the term off licence will be used to refer to specialist off-licences, with the term ‘mixed trading premises’ being used to refer to retail outlets such as supermarkets, convenience stores and petrol stations where business other than licensed business is also carried on.

3.4 Most off-licences and many mixed trading premises hold all three licences listed above and are, therefore, authorised to sell the full range of alcohol products. Applicants for off-licences permitting the sale of spirits and beer must apply to the District Court for court certificates which must be produced to the Revenue Commissioners prior to issue of the licence. The District Court is authorised to refuse to grant the required certificate if in any case it accepts the validity of an objection based on any of the permitted grounds of objection (see below). Otherwise, it may grant the certificate on being satisfied that an existing licence from anywhere within the State – usually a full public house licence – will be extinguished, if and when a new licence is granted to the applicant.<sup>9</sup>

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<sup>9</sup> The process of securing a licensee’s agreement to extinguish an existing licence for the purposes of another person obtaining a new licence is sometimes, incorrectly, referred to as ‘purchasing’ a licence.

- 3.5 Under legislation dating from 1860, an application for a wine-retailer's off licence is made directly to the Revenue Commissioners and no court certificate is required. There are no grounds for objecting to grant of the licence but objection may be made to its renewal.
- 3.6 Data from the Revenue Commissioners (Table 3) indicate that numbers of off-licences have been increasing steadily over recent years. These data show that the number of off-licences and mixed trading premises authorised to sell the full range of alcohol products increased by almost 70% between 2001 and 2007, while the number of premises authorised to sell only wine also increased significantly over the same period.

**Table 3: Number of Off Licences, 2001-2007**

Licence type	2001	2002	2003	2004	2005	2006	2007
<b>Spirits</b>	792	808	785	983	1,070	1,170	1,342
<b>Beer</b>	785	763	786	990	1,073	1,170	1,431
<b>Wine</b>	1,284	2,023	2,392	2,790	3,026	3,485	3,691

*Source: Revenue Commissioners*

### **District Court certificate for wine retailer's off-licence**

- 3.7 As mentioned earlier, a wine retailer's off-licence may be obtained from the Revenue Commissioners without a court certificate. The Group considers that this is unsatisfactory and recommends that the grant of such licences be made subject to the rules requiring production of a District Court certificate to the Revenue Commissioners.

- **The Group recommends that applicants for a wine-retailer's off-licence be required to produce a District Court certificate to the Revenue Commissioners.**

### **Grounds for objection**

- 3.8 The Group is concerned at the marked increase in the number of off licences with spirit, beer and wine off licences in recent years. This has occurred despite the existence of certain statutory safeguards. Where a licence for the sale of spirits and beer is sought, notice of intention to apply for the necessary District Court certificate must be served on the local Gardaí at least 21 days before the hearing of the application. Notice of the application must also be published at least 21 days before the hearing in a newspaper circulating in the area in which the premises are located. These provisions are intended to ensure that any objections to granting the certificate are brought to the District Court's attention at the hearing. However, the grounds on which objection may be made are restricted when compared with those applicable to the grant of certificates for certain other categories of licence.
- 3.9 The Group is concerned that the grounds on which objection may be made to the grant of certificates for the spirit retailer's and beer retailer's off-licences are unduly narrow and that no provision is currently made for objections to the granting of wine retailer's

off-licences. This unsatisfactory situation needs to be remedied as a matter of urgency. Under statutory provisions dating from 1872 and 1874, the grounds of objection to a spirit retailer's off-licence are limited to the good character of the applicant and the suitability of the premises. Statutory provisions dating from 1864 and 1877 limit objections to the grant of a beer retailer's off-licence to the character of the applicant, the suitability of the premises and compliance with a specified rateable valuation threshold.

3.10 The Group considers that the foregoing compares unfavourably with the broader objection grounds specified in the Intoxicating Liquor Act 2000. This Act permits the court to refuse to issue the required certificate if it accepts the validity of an objection on any of the following grounds:

- the character, misconduct or unfitness of the applicant;
- the unfitness or inconvenience of the new premises;
- their unsuitability for the needs of persons residing in the neighbourhood; and
- the adequacy of the existing number of licensed premises of the same character in the neighbourhood.

3.11 The Group notes that the third of these grounds permits the lodging of objections on the basis that the proposed sale of alcohol is unsuitable for the needs of persons residing in the area, while the fourth permits objections on the ground that the number of licensed outlets of the same character in the neighbourhood is already adequate. The Group considers that both these grounds are appropriate and relevant when it comes to both off-licences and mixed trading premises. While the Group is aware that the forthcoming Sale of Alcohol Bill proposes to extend the grounds on which objection may be made to the grant of all alcohol licences to include those set out above, the urgency of the situation requires that action be taken in the short-term to address this issue.

- **The Group recommends that the grounds on which objection may be made to the grant of District Court certificates for spirit, beer and wine off-licences be extended to include the suitability of licensed premises for the needs of local residents and the adequacy of the existing number of licensed premises of the same character in the neighbourhood.**

## **Trading hours**

3.12 As regards trading hours, off-licences enjoy the same opening and closing times as public houses (without 30 minutes drinking-up time), i.e. 10.30 a.m. to 11.30 p.m. from Monday to Thursday; 10.30 a.m. to 12.30 a.m. on Friday and Saturday, and 12.30 p.m. to 11.00 p.m. on Sunday. The Group considers that the period during which alcohol may be sold in such outlets is excessive and has concluded that an earlier limit of 10.00 p.m. for all off-sales could contribute to addressing availability concerns and contribute to reducing alcohol misuse.

- 3.13 In order to ensure consistency of approach and implementation, this 10.00 p.m. limit should also apply to off-sales in public houses, etc. Moreover, for the purposes of enforcement, any person leaving such premises in possession of alcohol after 10.00 p.m. should be presumed, until the contrary is proved, to have purchased the alcohol after 10.00 p.m.
- 3.14 The Group notes that off-sales of alcohol on Sundays are permitted only after half past midday. This means that people who may purchase groceries or newspapers earlier in the day are not permitted to purchase alcohol products. The Group considers that this amounts to an inconvenience rather than a meaningful restriction on the availability of alcohol and recommends that the 10.30 a.m. to 10.00 p.m. time limit apply to off-licences and mixed trading premises on both weekdays and Sundays.
- 3.15 While mixed trading premises are bound by the same closing times as off-licences, current rules permit mixed trading premises to sell alcohol from 7.30 a.m. on weekdays, i.e. 3 hours before the commencement of normal trading hours. The Group considers that such early-morning sales of alcohol should no longer be permitted and recommends that off-sales between 7.30 a.m. and 10.30 a.m. be prohibited. This means that mixed trading premises will no longer be permitted to sell alcohol between 7.30 a.m. and 10.30 a.m. on weekdays.
- **The Group recommends that off-sales be permitted only between 10.30 a.m. and 10.00 p.m. including Sundays, in the cases of off-licences and mixed trading premises**

### **Conditions for the sale of alcohol in mixed trading premises**

- 3.16 Licensing law currently provides that where business other than the sale of alcohol (non-licensed business) is carried on in licensed premises, the keeping open of the premises for the purpose of carrying on the non-licensed business is permitted at any time. Nowadays, many ‘mixed trading’ premises, e.g. supermarkets and convenience stores, remain open for non-licensed business for long periods during which the sale of alcohol is prohibited. There may be a risk that alcohol will be sold during such periods, especially where staff members lack adequate training. However, even where such risks do not exist, the fact that alcohol products are generally displayed and promoted side-by-side with grocery products tends to convey the impression that alcohol is an ordinary product that is not subject to specific legislative controls. This leads on to the issue of whether and, if so, in what manner, the display and sale of alcohol products should be separated from other grocery products in mixed trading premises.
- 3.17 The Group is aware that concerns about the sale of alcohol in supermarkets surfaced in discussions leading up to enactment of the Intoxicating Liquor Act 1988 in the context of possible sales of alcohol to under-age persons. These discussions resulted in enactment of a ‘structural separation’ provision which was intended to apply to mixed trading premises. It provided that alcohol had to be sold from a separate intoxicating liquor counter, i.e. a counter (or a separate part of the premises concerned) from or at which products other than alcohol could not be sold or paid for. In short, this provision required that the sale of alcohol be physically separated from the sale of other products in premises engaged in mixed trading.

3.18 This provision was never brought into force and was eventually repealed in 2000. The main justification for repealing it was that the greatly increased penalties for convictions for the sale of alcohol to under-age persons introduced by the Intoxicating Liquor 2000 Act were likely to prove more effective. The relevant provisions include removal of the “reasonable belief” defence and the imposition of compulsory temporary closure orders on conviction for such offences.. It was believed that far reaching financial penalties, including loss of business while premises remained closed under closure orders, would prove to be more effective in preventing sales to under-age persons.

3.19 The Group now favours the introduction of a model of ‘structural separation’ on the lines referred to above in order to address the excessive-availability problem. The Group has learned that similar measures are contemplated in Northern Ireland and Scotland.

3.20 The Group supports a form of structural separation which would incorporate the following elements:

- **Where is not possible to create separate premises with public access from outside the building, alcohol sales should be confined to one specified area in the premises; this area should be separated from the rest of the premises by a solid wall or other similar barrier.**
- **Movement between the specified area and the rest of the premises should be possible through a door, gate or turnstile; the public must, however, have access to the rest of the premises without having to pass through the specified area.**
- **Any person purchasing alcohol may only do so at a counter or point of sale within the specified area (sales of non-alcoholic beverages would also be permitted within this area).**
- **Whatever its location, the Gardaí must have access to the specified area at all times.**

3.21 The Group is conscious that the space requirements for structural separation could create difficulties for smaller premises, some of which may be located in rural areas where there are no alternative outlets. In order to alleviate such difficulties, the Group considers that where structural separation is not feasible, the only permitted alternative arrangement would require that alcohol be stored and displayed for sale in a part of the premises where public access is securely prevented and self-service is not permitted, e.g. behind a secure counter. This means that the customer will have to request the product from the cashier.

- **The Group recommends the introduction of structural separation of alcohol products from non-alcohol products in mixed trading premises.**

## **Petrol stations**

3.22 The Group is aware of and recognises specific concerns relating to the sale of alcohol in petrol stations. The difficulty that arises in relation to restricting such sales is that the petrol station may also be the local supermarket or convenience store. This is frequently the case in rural areas, in contrast to urban areas where there is usually no scarcity of alternative retail outlets. The Group recommends that consideration be given in the

forthcoming Sale of Alcohol Bill to identifying specific criteria which would distinguish petrol stations which are genuinely engaged in mixed trading for the benefit of the local community from those which rely mainly on the sale of fuel. In the meantime, the recommendations in this chapter applicable to mixed trading premises are intended to apply to petrol stations.

## **Staff training**

3.23 There are no statutory training standards or training requirements for staff involved in the sale of alcohol at present, such as the responsible sale of alcohol programmes (RSA). The Group notes that the Department of Health and Children is in consultation with various licensed trade bodies with a view to promoting such training and supports their efforts to devise and implement meaningful and effective training standards. Two issues need to be addressed: firstly, the content of training courses (different sectors will have differing requirements); secondly, the accreditation of courses and training providers. Ideally, all staff should be trained and lack of adequate training should constitute a ground for objecting to the grant and renewal of licences.

- **The Group recommends that adequate staff training standards be introduced and that the grant and renewal of licences be made conditional on compliance with such standards.**

## **Age-related issues**

3.24 Under section 38 of the Intoxicating Liquor Act 1988, licensees are prohibited from employing persons under the age of 18 years for the sale of alcohol, whether for consumption on or off the premises or permitting under-18s to sell alcohol. An exception is made for relatives of the licensee and for apprentices aged 16 and 17. The Group is concerned that in the absence of training standards, a lack of knowledge of licensing law or relevant experience could result in young staff being unwilling or unable to challenge young customers to produce adequate identification and proof of age. For these reasons, the Group favours increasing the minimum age for alcohol sales in off-licences and mixed trading premises to 21 years.

- **The Group recommends that the minimum age for selling alcohol in off-licences and mixed trading premises be increased to 21 years.**

3.25 The prohibition on under-18s selling alcohol also applies to premises with on-licences, e.g. public houses. However, the legislation permits 16 and 17 year olds to engage in 'general duties' in such premises; these are defined as including the taking of orders for alcohol and serving it at tables but not supplying it from behind a bar counter. A Code of Practice concerning the Employment of Young Persons in Licensed Premises has been agreed between licensed trade and trade union organisations and is attached as a Schedule to the Protection of Young Persons (Employment) Act 1996 (Employment in Licensed Premises) Regulations 2001 (SI No 350 of 2001). These regulations have been made under the Protection of Young Persons (Employment) Act 1996 and the Code covers areas such as pay, induction training, study time, health and safety and parental consent.

3.26 While the Group recognises the opportunities for part-time employment for young people which arise in this area, and acknowledges the protection and safeguards

contained in the 2001 Regulations, it wishes to express reservations concerning the employment of 16 and 17 year olds in premises with on-licences, especially in the bars of such premises where they are likely to encounter and witness excessive alcohol consumption and possibly drunkenness.

➤ **The Group recommends that provisions permitting the employment of 16 and 17 year olds in bars be reviewed in the context of the forthcoming Sale of Alcohol Bill.**

- 3.27 The Group has also considered the possibility of increasing the age for purchasing alcohol beyond 18 years, at least for certain categories of alcohol. While such a move might appear to be desirable, the fact remains that 18 is the age of majority and it is the point in time at which young people acquire many rights and may take on new responsibilities, e.g. voting, marriage and/or mortgage. For these reasons, the Group would not recommend any change in current arrangements.
- 3.28 Section 25 of the Intoxicating Liquor Act 2003 has amended the Equal Status Act 2000 in a manner which permits licensees to adopt and implement a policy of refusing to supply alcohol to persons below an age which exceeds 18 years. This means that licensed premises can voluntarily adopt a policy specifying an age limit that exceeds 18 years and the licensee will not be in breach of the Equal Status Act 2000 on condition that a notice setting out the policy is displayed in a conspicuous place in or on the exterior of the premises and the policy is implemented in good faith.

### **Age cards and identification issues**

- 3.29 Section 40 of the Intoxicating Liquor Act 1988 contains a provision for the making of regulations for an age card scheme. Section 40 specifies that cards may only be issued to persons who have attained the age of 18 years and who request them. Regulations for the Garda age card scheme were made in 1999 and they were updated in 2007. The updated regulations provide for a new card with state-of-the-art security features.
- 3.30 The Intoxicating Liquor Act 2003 requires persons aged 18, 19 and 20 to carry an “age document” in order to be in the bar of licensed premises after 9.00 p.m. (10.00 p.m. from 1 May to 30 September). This requirement is intended to assist licensees in complying with statutory provisions relating to under-age consumption of alcohol and to assist the Gardaí in enforcing the law. The fact that production of such an age document is mandatory at specified times does not, of course, prevent the licensee from demanding evidence of age at any time whenever there is doubt regarding a person’s age. The legislation specifies that an age document may be one of the following: a Garda age card; passport; identity card of an EU member state; driver’s licence; or a document prescribed in regulations to be made by the Minister (no such regulations have been made to date).
- 3.31 An issue that arises frequently is whether production of the Garda age card should be made mandatory for all sales of alcohol to persons over aged 18, 19 and 20. It is argued that this would improve compliance with and enforcement of the statutory provisions relating to under-age persons. Such a statutory requirement would not present particular problems for young people already resident in the State, but it would be difficult to apply to young tourists and visitors who would have no means of procuring the card prior to arrival in the country. In such cases, a passport or, where no passport is required

for entry into the State (i.e. people coming from Northern Ireland or Great Britain), an alternative proof-of-age document should be demanded instead of the Garda age card.

3.32 The Group considers that awareness and usage of the Garda age card should be promoted and that licensees can play an important role in this regard by demanding production of this card in preference to other forms of identification. In this way, production of the Garda age card could become ‘quasi-mandatory’. Moreover, there is a potential benefit for licensees who demand production of the Garda age card for proof-of-age purposes: in proceedings for the sale or delivery of alcohol to an under-age person, it is a defence for the defendant to prove that the person in respect of whom the charge is brought produced a Garda age card. This defence is not available when other forms of identification are accepted.

➤ **The Group recommends that licensees promote awareness and use of the Garda age card by demanding production of that card in preference to other forms of identification.**

3.33 The Group also understands that the possibility of making the Garda age card available free of charge has been examined by a Department of Justice, Equality and Law Reform Review Group following an earlier recommendation of the Commission on Liquor Licensing. It appears that the Review Group was not convinced that the abolition of the fee which is charged for the age card (currently €10) was warranted.

## **Test purchasing**

3.34 The Group recognises that the vast majority of licensees are genuinely committed to promoting and complying with licensing law provisions. However, there is general acceptance that these high standards are not universally respected and this illustrates the shortcomings of a voluntary restraint or self-regulation model. The Group considers that additional measures are required to assist the Gardaí in identifying licensees who flout the law relating to under-age sales and to assist in the prosecution of offences.

3.35 The Group’s attention has been drawn to a recent prosecution for the sale of tobacco to a person under the age of 18 years under the Tobacco (Health Promotion and Protection) Act 1988 (as amended by the Health (Miscellaneous Provisions) Act 2001). The prosecution arose from a test purchase under the supervision of an Environmental Health Officer which was based on a ‘Protocol for the Test Purchase of Tobacco Products’ drawn up by the Office of Tobacco Control. While no specific legislation exists to support the Protocol or the use of test purchase procedures, the High Court has found, on a consultative case stated by the District Court, that public policy requires that children be protected from the dangers of smoking and that random test purchases are justified.

3.36 Following the Chairman’s presentation on the work of the Group to the Joint Committee on Justice, Equality, Defence and Women’s Rights on 5 February, the Group was supplied with details of California’s Sale of Alcohol Beverage Decoy Programme, which involves using minors as decoys for the purchase of alcohol (a delegation from the Committee had visited San Francisco to examine licensing reforms there in 2003). The California Supreme Court has held that this Programme is legal and is not a form of entrapment.

- 3.37 The Group has also become aware that a Draft Criminal Justice (Northern Ireland) Order, which was published for consultation purposes in November 2007, makes provision for test purchases of alcohol. The intention is to permit the police to test for sales of alcohol to minors by allowing them to undertake test purchase operations. The provision will amend existing legislation, i.e. the Licensing (NI) Order 1996, to allow a person under 18 years of age, under the direction of a police constable acting in the course of his or her duty, to enter licensed premises to seek to purchase alcohol. The police officer must take all reasonable steps to avoid risk to the person undertaking the test purchase exercise and must obtain parental consent in writing for the young person involved.
- 3.38 The Group accepts that there is considerable public concern and alarm concerning the sale of alcohol to, and consumption of alcohol by, persons under the age of 18 years. For this reason, the Group accepts that test purchasing may have a role to play in combating alcohol sales to under-18s and it supports the introduction of test purchasing procedures subject to the implementation of adequate safeguards for the protection of the young people involved in them. Such safeguards should seek to ensure parental consent and the protection as far as possible of the identity and privacy of those involved.
- 3.39 The Group acknowledges that test purchasing would have little impact in cases where licensees are prepared to sell alcohol to under-18s but only to those whom they know personally. It believes nevertheless that test purchasing would provide the Gardai with a new enforcement mechanism, allowing them to target particular licensed premises (with on-licences or off-licences) where there are suspicions that sales to under-18s are taking place. In order to avoid any legal challenges, the Group favours enactment of a statutory provision to permit such a procedure.
- **The Group recommends enactment of a statutory provision to permit test purchasing of alcohol by persons under the age of 18 years, subject to necessary safeguards, with a view to promoting compliance with licensing law.**

## Secondary purchasing

- 3.40 Section 31 of the Intoxicating Liquor Act 1988 prohibits the sale of alcohol by licensees to persons under the age of 18 years. Section 32 of the same Act targets secondary purchasing of alcohol, i.e. where alcohol is legally purchased by a person over the age of 18 but is subsequently passed on to under-18s. Framing legislation to deal with the supply of alcohol to under 18s presents a particular challenge. It must seek to accommodate cases where a parent permits supervised consumption of alcohol by a 17 year old within the family environment while, at the same time, combating situations where alcohol is purchased by an older sibling, or some other third party, for unsupervised consumption by under-18s in public parks or other outdoor locations.
- 3.41 The law as currently framed prohibits any person from purchasing alcohol for delivery to, or consumption by a person under the age of 18 years, or delivering alcohol to such a person, but it is not unlawful to purchase alcohol for consumption by a person under 18 years in a private residence with the explicit consent of that person's parent or guardian.
- 3.42 The difficulties facing the Gardaí in enforcing these provisions are obvious: the prosecution of a person for the passing on of alcohol to an under-18 year old is difficult unless the transaction is actually observed by a Garda. As regards unlawful consumption

of alcohol within homes, i.e. where the required parental consent has not been sought and obtained, the Gardaí are powerless to act unless a specific complaint is made. Parents or guardians must, therefore, carry primary responsibility for ensuring that consumption of alcohol by non-family members under the age of 18s has been authorised by their parents.

- 3.43 The Group's attention has been drawn to instances where young people gather together in the vicinity of off-licences and mixed trading premises and threaten or otherwise attempt to pressurise individuals who are over 18 to purchase alcohol for them. While this form of harassment may be difficult to eradicate, the Group considers that the installation of an adequate CCTV surveillance system as a condition for granting or renewing licences for premises where such activity occurs could help to combat this problem. Garda views on the desirability of installing and maintaining such a system in any particular case should be taken into account by the District Court when hearing the application.
- **The Group recommends that the District Court, having given full consideration to any views expressed by the Gardaí, be authorised to insist upon an adequate CCTV system as a condition for the grant of a certificate, or renewal of a licence, in respect of an off-licence or mixed trading premises.**

### **Labelling of alcohol containers**

- 3.44 The making of regulation to require specific labelling of alcohol containers as a means of combating secondary purchasing is provided for in section 22 of the Intoxicating Liquor Act 2003. It provides for the making of a statutory instrument specifying particulars to be affixed to containers in which alcohol is sold for consumption off licensed premises which are adequate to enable the licensee and the premises concerned to be identified.
- 3.45 The Group has been informed that implementation of these provisions by means of regulations, rather than primary legislation, is intended to avoid any later challenge on the grounds that proper EU procedures had not been followed. It appears that any proposed regulations in this area would have to be notified to the European Commission in accordance with the so-called Technical Standards or Transparency Directives (Directives 98/34/EC and 98/48/EC). These Directives are intended to enable the European Commission and other Member States to examine in advance any proposals for national standards or technical rules in the interests of transparency and the smooth functioning of the internal market.
- 3.46 The Group is also aware that the Minister for Justice, Equality and Law Reform has indicated in answers to parliamentary questions that while the labelling of containers might at first sight appear to be an attractive solution to an intractable problem, significant challenges need to be overcome to render it effective in practice. Firstly, there are the practical difficulties at retail level where several individual containers are packaged together for sale, e.g. an enclosed six-pack of bottles; a plastic-wrapped tray of cans; or a nailed wooden box containing bottles of wine. This raises the question of whether the label should be attached at an earlier stage in the supply chain rather than at the point of retail sale. Attaching such labels at an earlier stage could create logistical difficulties for distributors and, in the case of imports from EU countries, any additional labelling requirements could be regarded as infringing the European Community's

internal market rules which are intended to guarantee the free movement of goods and services.

- 3.47 Even if such logistical difficulties could be overcome, an equally important concern is whether or not any such additional labelling requirements would improve enforcement of the law. It is clear that possession by an under-age person of a labelled container could not in itself constitute proof that the alcohol in the container has been illegally supplied to him or her by the licensee whose particulars appear on the container. The alcohol may have been taken from the family home or have been sold to a person over the age of 18 in good faith before being passed on to the underage person. Indeed, such a container might have changed hands several times before finding its way into the possession of an underage person.
- 3.48 It emerges from the Minister's replies to the parliamentary questions mentioned earlier that concerns relating to the evidential value of being found in possession of a labelled container were raised during consultations between the Department of Justice, Equality and Law Reform and the Attorney General's Office on implementation of section 22 of the 2003 Act. According to the Minister, the latter expressed serious doubts about the evidential value of possession of a labelled container and doubt is, therefore, cast on the benefits of any regulations that might be made under the 2003 Act. For these reasons, the Minister has indicated that he does not intend to make regulations under section 22 but has stated that he would give serious consideration to any reasonable and workable alternative.
- 3.49 While the Group has been unable to develop any alternative scheme of a statutory nature within the time available to it to complete its work, it would encourage the organisations representing off-licences and mixed trading premises to consider the introduction of voluntary labelling initiatives on a local basis.
- **The Group recommends that voluntary pilot projects be undertaken in co-operation with local Gardaí to assess the value of labelling for the purposes of enforcement of licensing law.**

## **Distance sales**

- 3.50 Certain control and enforcement difficulties arise in relation to sales concluded using electronic means. What constitutes a sale? How does the offer, acceptance and consideration framework which underpins sales contracts apply in such situations? In those cases where purchases, including alcohol products, are made on-line from a licensee's website – many supermarkets offer an on-line shopping service nowadays – the European Community's Electronic Commerce Directive (2003/31/EC) provides that the website must provide information on the different steps that the consumer must follow in order to conclude a contract. This information must be presented in a clear and understandable manner prior to the purchase being made by the consumer.
- 3.51 Normally such a website will display details of the products being offered for sale. This appears to constitute 'an invitation to treat'. Where a person wants to conclude a sale, he or she indicates an intention to make an offer by selecting the product and taking whatever further steps are required to purchase it. This normally involves giving details of a credit or debit card and clicking on the relevant button to confirm the order. The product may subsequently be delivered by or on behalf of the licensee to the consumer's

home. An important point to note here is that payment is made as part of the on-line sale transaction and not later on delivery of the product. The Group understands that specific provisions dealing with distance sales will be included in the forthcoming Sale of Alcohol Bill.

3.52 The Group's attention has been drawn to types of delivery sales where the foregoing formalities are not necessarily complied with, e.g. dial-a-can services. The Group considers that sales of alcohol products which have been ordered by telephone or text messaging and which are paid for by the consumer on delivery do not comply with the existing statutory provisions and are, therefore, illegal. Under section 17(3) of the Intoxicating Liquor Act 2003, it is an offence for a licensee, with intent to evade the conditions of the licence, to take intoxicating liquor from the licensed premises for the purpose of its being sold on the account or for the benefit or profit of the licensee, or to permit any other person to do so. The penalty on conviction is a fine of up to €1,500 for a first offence and up to €2,000 for a second or subsequent offence.

➤ **The Group recommends that the Gardaí target dial-a-can and similar delivery services with a view to prosecuting the offending licensees.**

3.53 Section 31 of the Intoxicating Liquor Act 1988 (as amended by the Intoxicating Liquor Acts of 2000 and 2003) makes provision for offences relating to the sale and delivery of alcohol to persons under the age of 18 years. It is an offence under section 31(2) for a licensee to sell or deliver, or to permit any other person to sell or deliver, alcohol to any person for consumption off his or her licensed premises by a person under the age of 18 years in any place except with the explicit consent of the person's parent or guardian in a private residence in which he or she is present either as of right or with permission. The penalty on conviction for this offence is a fine of up to €1,270 for a first offence and up to €1,904 for a second or subsequent offence. In addition, the Intoxicating Liquor Act 2000 provides for the mandatory temporary closure of licensed premises in cases where a licensee is convicted of an offence under section 31 of the 1988 Act (up to 7 days for a first offence, or at least 7 and not more than 30 days for a second or subsequent offence). Enforcement of these provisions is difficult for the Gardaí for the reasons outlined earlier (see par. 30 above). Here too, parental responsibility is all important.

### **Below-cost sales and special promotions of alcohol**

3.54 The Groceries Order, which had given statutory effect to minimum pricing arrangements and had prohibited below-cost selling of products, including alcohol, was repealed by the Minister for Enterprise, Trade and Employment in March 2006. Its repeal was based, among other considerations, on the difficulties experienced in monitoring compliance with its provisions and in securing convictions for below-cost selling.

3.55 Prosecutions for below-cost sales required knowledge of the wholesale price to the retailer but in practice the unit cost to the retailer could vary depending on a range of factors. The level of discounts resulting from agreements between the wholesaler and retailer for bulk purchasing, marketing agreements, product placement and product promotions proved difficult to quantify. Moreover these terms were generally not factored into the original sales invoices from the wholesaler, which meant that they could show a higher price compared with the actual price when all discounts were taken into account. Special terms could also vary from one retailer to another depending on

the quantity purchased and the retailer's relative market position. A further complicating factor was that there could be a significant time lag between the original order and subsequent discounts.

- 3.56 These enforcement problems were among the factors which ultimately led to repeal of the Groceries Order. The Department of Enterprise, Trade and Employment has already indicated that restoration of the Order is not feasible and that the inspectorate that had the responsibility for monitoring prices and enforcing the Order is no longer available for this type of work.
- 3.57 The suggestion has been made that a minimum price for alcohol products be established using a system similar to that currently applicable to cigarettes. The minimum prices set by the Department of Health and Children for cigarettes are based on a voluntary agreement reached a number of years ago between the Department and the tobacco industry. However, retail price controls have raised concerns by the EU Commission in connection with Article 9 of Directive 95/59/EC. These concerns have been expressed in infringement proceedings against Ireland. The Commission argues that setting minimum prices is in restraint of trade and that the same effect can be achieved by increasing prices by setting a higher level of taxation. The Commission also argues that the floor pricing mechanism has the effect of boosting tobacco companies' profits. It would appear that seeking a voluntary agreement on minimum prices for alcohol products might also be in breach of competition law. An alternative approach may be for the relevant Government Departments to seek to make provision for a legislative framework for minimum pricing of such products. This is a matter that needs further detailed examination, particularly in view of the position taken by the EU Commission.
- 3.58 As regards special promotions involving reduced prices and discounts, the Group acknowledges that the increased affordability of alcohol is a result not only of price, but also of the greatly increased disposable income levels which have resulted from the rapid economic progress and prosperity of recent years. Many people, including many young people engaged in part-time work, now have unprecedented levels of disposable income due to the increased availability of work opportunities.
- 3.59 The Group is satisfied, however, that the price at which alcohol is sold remains an important influence on purchasing patterns and that lower alcohol prices are being used as a means to attract customers, particularly in the case of mixed trading premises. In short, cheaper alcohol is being used to attract customers in the expectation that they will purchase other products as well as alcohol once inside the store.
- 3.60 The Group is of course conscious of the desirability of allowing consumers to purchase goods and services at the best price possible and is also conscious of arguments regarding the need to continue to allow those who consume alcohol in moderate amounts to benefit from lower prices. However, these have to be balanced against the effect that lower prices have on the ability of those who misuse alcohol to purchase more and cause further harm to themselves and others. As stated at the outset, the Group is strongly of the view that alcohol is not an ordinary grocery product and it must be treated differently in light of the public order and public health consequences of alcohol misuse.
- 3.61 The Group has identified the control of those promotional and pricing practices which appear to encourage increased purchases of alcohol as a potentially important means of

tackling excessive consumption patterns. At a minimum, price-based promotions of alcohol should no longer be allowed.

3.62 Various types of price-based promotions are currently being used to promote alcohol sales ranging from ‘2 for the price of 1’ offers to various kinds of concessions, e.g. bonus points on loyalty cards. In order to eliminate this practice, multiple purchases should be priced at the cost of a single unit multiplied by the number of units purchased. It would no longer be possible therefore to obtain any reductions based on the volume of units purchased. For example, the price of two bottles of wine would be the price per unit multiplied by two and a six-pack of beer would be the cost per unit multiplied by six. There would no longer be any price saving from multiple purchases. Any promotion or advertising of alcohol products would include the unit price and no other price.

➤ **The Group recommends that—**

- **alcohol products must be priced and sold on the basis of a unit price; this means that the promotion, supply or sale of alcohol products either free of charge or at a reduced price on purchase of one or more units of the product, whether for consumption on or off the premises, should be prohibited;**
- **the award of bonus points, loyalty card points or any other benefit on sales of alcohol products, directly or indirectly, and the use of any such points or benefits for the sale at a reduced prices of alcohol or any other product should also be prohibited;**
- **promotional or advertising materials may only contain the unit price of the product and may not mention any other price or any reference to sale at a reduced price;**
- **promotional and advertising materials in mixed trading premises should only be displayed in the specified area where alcohol is exposed for sale.**

3.63 The Group recognises the risk that the sale of alcohol on the basis of a unit price without the minimum price framework referred to earlier, could result in lower alcohol prices generally. For example, instead of ‘2 for the price of 1’, each product could be sold at 50% of the normal price. This points to the urgent need for more detailed examination of a statutory minimum price framework.

3.64 The Group is satisfied that while enforcement of pricing and promotional provisions, if enacted, will be crucial, the Gardaí are ill-suited to undertake such a role. The Group has expressed concerns in relation to inadequate enforcement of the licensing laws elsewhere in this Report and is also conscious of the significant workload involved in dealing with the alcohol-related public disorder and assaults referred to in chapter 2. Allocating the task of monitoring and investigating special promotions and alcohol prices in supermarkets or convenience stores to the Gardaí would not represent an optimal allocation of Garda resources.

3.65 The Group is not in a position to identify and recommend alternative enforcement mechanisms. This is a task for relevant Government Departments and public bodies with responsibilities in this area. It may be possible to allocate the necessary enforcement responsibilities to an existing agency or inspectorate. Otherwise, thought will need to be

given to the establishment of some new monitoring and enforcement structure, possibly something on the lines of the existing Office for Tobacco Control which has a specific public health mandate. This is a matter that needs to be considered urgently in the context of the overall national alcohol strategy recommended earlier in this Report.

## Chapter 4 – Extended opening hours

- 4.1 The Group has been asked to examine the increasing number of special exemption orders granted by the District Court which permit premises with on-licences to enjoy extended opening hours for special occasions.

### Background

- 4.2 Licensing law contains provisions which permit extended opening hours for ‘special occasions’. Section 5 of the Intoxicating Liquor Act 1927 (as substituted in its entirety by section 11 of the Intoxicating Liquor Act 2003) permits a licensee to apply to the District Court for a ‘special exemption order’ which permits on-licensed premises to remain open during the additional period and for the purposes of the special occasion specified in the order. The applicant must have served notice of the application on the local Gardaí not less than 48 hours before the District Court hearing.
- 4.3 The District Court may grant the exemption order for the premises concerned having heard the Gardaí for that licensing area and on being satisfied that the special occasion will be conducted in a manner that will not cause undue inconvenience or nuisance to local residents or create an undue risk to public order in the locality.
- 4.4 The numbers of special exemption orders granted by the District Court for special occasions have been increasing in recent years:

**Table 5: Special Exemption order granted, 2002-2007**

2002	2003	2004	2005	2006	2007
81,933	86,178	89,716	93,247	91,157	90,700 (est.)

*Source: The Courts Service*

### Special occasions

- 4.5 For the purposes of granting special exemption orders, ‘special occasions’ fall under the following headings:
- a special event that is organised for the entertainment of the members of a particular association or group (e.g. an annual dinner) or a private function (e.g. wedding reception) at which a substantial meal is served to persons attending the event, or
  - a dance held in a ballroom licensed under the Public Dance Halls Acts 1935 to 2003 which is part of the premises in respect of which the special exemption order is sought.
- 4.6 It would appear that the great majority of special exemption orders are granted in respect of licensed premises which operate nightclubs or late bars. Licensing law does not at present make specific provision for a form of nightclub licence or authorisation with the result that nightclub operators must apply to the District Court on a monthly basis for an exemption order for each night on which the nightclub operates. In reality, these are not ‘special’ occasions as envisaged in the legislation; however, the special exemption order

mechanism provides, in the absence of a more suitable statutory provision, the statutory basis on which nightclubs presently operate.

- 4.7 Nightclub operators point to the important contribution they make to the leisure and tourism sectors, whether by those enjoying weekend breaks or tourists from abroad spending their holidays here, and emphasise the need for a stable legislative framework within which to operate. The Group accepts that the granting of special exemption orders is an unsatisfactory basis on which to regulate the operation of nightclubs and for this reason it welcomes the proposals in the forthcoming Sale of Alcohol Bill to create a nightclub permit to cater for the specific needs of the sector. It is intended that the granting of such a permit will be subject to an annual District Court procedure not unlike the procedure involved in obtaining a certificate for the sale of alcohol.
- 4.8 The Group has also noted that the forthcoming legislation will provide that before granting a special exemption order, the District Court must be satisfied, on the basis of certification by a suitably qualified person, that fire safety standards under the Building Control Act 1990 are complied with in the premises for which the order is being sought. Moreover, the Court will be required, when granting a special exemption order, to specify in the interests of safety a maximum occupancy level for the premises.
- **The Group recommends that the grant of special exemption orders to nightclubs be made subject to compliance with fire safety standards and in each case to determination by the Court of maximum occupancy levels for the premises concerned.**
- 4.9 The position regarding special exemption orders for licensed premises operating as late bars is less clear cut and the current situation is unsatisfactory. Many of these premises are not marketed as dancing venues (it would not appear that dancing is encouraged in many of them), but in order to take advantage of the special exemption order facility, they must obtain a dance licence from the District Court under the Public Dance Halls Acts. The Group is concerned that dance licences are too readily available for premises which operate as late bars and which are not primarily intended to cater for dancing.
- **The Group recommends that a review of the Public Dance Halls Acts be undertaken urgently in order to examine the criteria applicable to the grant of such licences by the District Court.**
- 4.10 Pending completion of such a review, the health and safety of customers in licensed premises operating as late bars is paramount and this means that fire safety standards must be maintained and overcrowding avoided.
- **The Group recommends that the grant of special exemption orders to late bars also be made subject to compliance with fire safety standards under the Building Control Act 1990 and in each case to determination by the Court of maximum occupancy levels for the premises concerned.**

## **Trading hours**

- 4.11 Current legislation provides that a special exemption order shall expire on any Monday (except where the Monday is a public holiday) at 1.00 a.m. and in any other case at 2.30 a.m. unless the District Court, for stated reasons, considers it expedient to grant the

order for a shorter period. When 30 minutes drinking-up time is added, it means that premises benefiting from special exemption order for a weekday generally close at 3.00 a.m.

- 4.12 Provision was made in the Intoxicating Liquor Act 2003 for local authorities to have a role in determining the duration of special exemption orders in their respective administrative areas (or a specified part of such an area). It means that any local authority may now adopt a resolution concerning expiry times having consulted with the relevant officer in charge of the Garda Síochána and any other persons, including health interests. The District Court, while retaining its discretion, is required to have regard to the terms of any such local authority resolution when making an order in respect of premises located in the area covered by the resolution. The Group has been informed that no local authority has availed of this provision to date and it regrets that an opportunity for local participation in a matter affecting local communities has been overlooked.
- 4.13 The Group is pleased to note that section 35 of the Garda Síochána Act 2005 provides for the establishment of ‘joint policing committees’ involving local authority representatives as a forum for consultations, discussions and recommendations on matters affecting local policing, including the levels and patterns of crime, disorder and anti-social behaviour (including alcohol misuse). The Group also notes that section 37 of the Act requires local authorities to have regard, in performing their functions, to the importance of taking steps to prevent crime, disorder and anti-social behaviour in their respective areas. The Group would encourage these committees to consider the extent to which special exemption orders may be a contributory factor to such problems in their areas.
- 4.14 While local authorities have not played any role to date in relation to the duration of special exemption orders, the courts have exercised the discretion given to them under the legislation to grant such orders for shorter periods, frequently at the request of the local Gardaí. Practice in this regard appears to vary between district court areas. This is hardly surprising since conditions will inevitably vary from one part of the country to another. On the other hand, the merits of a consistent approach across the country are obvious, particularly when it come to appeals to the Circuit Court against District Court restrictions.
- 4.15 The Group has been impressed by the approach adopted in certain parts of Cork and Kerry. In Tralee, the Gardaí, having aired their concerns in relation to public disorder in the area in advance of the District Court hearing, sought an expiry time of 2.00 a.m. and this was granted by the Court. It appears that this relatively modest adjustment has lead to a 14% reduction in assaults and a 10% reduction in public disorder. In Letterkenny, Co. Donegal, the courts have also restricted the duration of special exemption orders in response to public order concerns on the part of the Gardaí. The Group welcomes these developments.
- 4.16 In Cork, following consultation between the Gardaí, the licensed trade and the judiciary, special exemption generally expire at 2.00 a.m. Applicants for such orders have also undertaken to comply with additional conditions, including the installation of an adequate CCTV system and the availability of licensed security staff.

- 4.17 The Group welcomes the initiatives already taken at local level to address public disorder and anti-social behaviour and looks forward to increased involvement on the part of joint policing committees. Reducing the duration of special exemption orders by 30 minutes in certain areas appears already to have yielded significant reductions in public disorder. For these reasons, the Group would generally favour a statutory reduction of 30 minutes in the duration of such orders, while allowing the courts to grant orders of shorter duration for stated reasons, e.g. where disorder has taken place previously or where inadequate security arrangements have been put in place.
- **The Group recommends that the current statutory limit of 2.30 a.m. be replaced with 2.00 a.m. while retaining the District Court’s discretion to grant extensions for shorter periods.**
- 4.18 The nightclub operators maintain that the financial viability of the sector depends on the existence of a margin between the normal closing times for public houses and the expiry times for special exemption orders. While the Group acknowledges the desire for such a margin, it has not examined the trading hours of public houses since this matter does not fall within its terms of reference.
- 4.19 The Group has already referred to the unsatisfactory arrangements for bona fide nightclubs (par. 7 above) and recommends that any necessary reforms in relation to normal trading hours be addressed in the context of the forthcoming Sale of Alcohol Bill.

## **Public order and security concerns**

- 4.20 At present, the District Court shall not grant a special exemption order unless it is satisfied that the special occasion will be conducted in a manner that will not cause undue inconvenience or nuisance to persons residing in the locality or create an undue risk to public order therein. This is intended to ensure that the needs of local residents are taken into account by the Court, as well as the public order concerns of the Gardaí. The Group considers that public awareness of this provision is limited and that the information deficit needs to be addressed. Local residents should be advised to convey any objections they may have on inconvenience or nuisance grounds to the Gardaí who are a statutory notice party to all applications. In order to strengthen the hands of the Gardaí, existing objection grounds should be extended to include a threat to public safety.
- **The Group recommends that the District Court should not grant a special exemption order for any premises unless satisfied that the special occasion will be conducted in a manner that will not—**
- **cause undue inconvenience or nuisance to persons residing in the locality, or**
  - **create an undue threat to public order or safety there.**
- 4.21 The Group also recognises the need to ensure adequate safety standards in the immediate vicinity of premises benefiting from a special exemption order, including an adequate number of security staff and appropriate CCTV system. These security measures may not be required, however, where the special occasion in question is not

open to members of the public, e.g. an event organised by a particular association or organisation or a private function.

- **The Group recommends that the making of special exemption orders in respect of special events to which the public are admitted be made conditional on the premise having an adequate, and fully operational, CCTV system.**

## **Theatre licences**

- 4.22 Theatres and other places of public entertainment are not subject to the same licensing conditions as other licensed premises. In order to obtain a licence for a theatre, it is not a requirement to secure extinguishment of an existing licence; neither is it necessary to produce a court certificate as to the character of the applicant or the suitability of the premises to the Revenue Commissioners. The principal requirement is a public singing and music licence issued by the District Court under Part IV of the Public Health Acts Amendment Act 1890. When this District Court licence is presented to the Revenue Commissioners, the latter have limited discretion in granting the theatre licence to the applicant.
- 4.23 An applicant for a public music and singing licence is required to serve notice on the Gardaí and the fire authorities. However, the Gardaí (and fire authority) may not be aware from the application that this licence will subsequently be used to obtain a theatre licence with a view to the premises operating as a late night venue. Public music and singing licences are granted by the District Court subject to such terms and conditions, including times during which they operate, as it considers appropriate. There is no mandatory closing time specified in legislation and this explains the attraction of this particular licence to operators of nightclubs and even public houses. Recent years have witnessed a very significant increase in the number of theatre licence holders. Some bona fide theatres have developed significant levels of licensed business after other licensed premises have closed while other premises have ‘converted’ into theatres to take advantage of more lenient trading conditions.
- 4.24 The duration of the period during which intoxicating liquor may be sold on foot of a theatre licence are dependent on the time limits (if any) stipulated in the music and singing licence. Within these limits, intoxicating liquor may be sold in the period beginning 30 minutes before a performance and ending 30 minutes after it. Enforcement of the law is extremely difficult because even though a performance may not be under way when Gardaí call to enforce the licensing laws, it may be claimed that a performance has ended within the previous 30 minutes, or is about to commence during the following 30 minutes. To add to the uncertainty, the term ‘performance’ is not defined in law.
- 4.25 The Group has concluded that theatres operating as late night venues enjoy an unfair advantage over other licensed premises. Firstly, they are not required to apply to the District Court for (and pay for) special exemption orders; and, secondly, they may remain open for longer as a result of the licensing regime applicable to public music and singing licences and the lack of any definition of ‘performance’.
- 4.26 While the Group welcomes the proposals to make theatre licences subject to the same District Court procedure as other licences in the forthcoming Sale of Alcohol Bill, the Group has been informed that holders of public house licences have begun to apply to

the Revenue Commissioners for theatre licences. While a total of 76 theatre licences were issued by the Revenue Commissioners in 2006 and again in 2007, almost 100 had been issued by the beginning of March this year. This is a worrying development and the Group recommends that urgent action be taken to address a possible proliferation of such licences.

4.27 While it may not be feasible to implement the far reaching reforms to the licensing system included in the forthcoming Sale of Alcohol Bill in the shorter Bill to be enacted before the Summer recess, the Group recommends that the trading hours applicable to theatres be aligned with those applicable to public houses and that holders of such licences be permitted in future to apply to the District Court for special exemption orders.

- **The Group recommends that the trading hours applicable to premises with theatre licences be made subject to the general time limits applicable to public houses and that holders of such licences be permitted to apply to the District Court for special exemption orders.**

### **General exemption orders**

4.28 Apart from special exemption orders, licensing law makes provision for early opening of licensed premises to cater for situations in which large numbers of people are attending a public market or fair or following a lawful trade or calling. These so-called 'general exemption orders' were important for people involved in such activities at a time when there were few restaurants or cafes since one of the principal conditions attaching to the granting of such an order is that the licensee must supply food and non-alcoholic drinks at reasonable prices to people requiring such refreshment.

4.29 A general exemption order cannot be granted for a period commencing before 5.00 a.m. where it is intended to cater for people attending a public market or fair, or before 7.00 a.m. for people following a lawful trade or calling (other than fishing in tidal waters).

4.30 While the granting of this type of exemption order may have served real needs in earlier times, the Group is not convinced that it serves any useful ongoing purpose. On the contrary, since there is generally no requirement that the facility be used only by those for whom such an order is intended to accommodate, there is a real possibility that early morning opening will be used by those for whom the facility was never intended: later night revellers on their way home or problem drinkers. The Group notes that the Intoxicating Liquor Act 1962 restricted the grant of such orders to licensed premises outside the County Borough of Dublin (unless a general exemption order was in force in respect of premises in April 1962 or during the preceding two years). It considers that the provision has outlived its usefulness and should be repealed.

- **The Group recommends the repeal of statutory provisions relating to the grant of general exemption orders which permit early opening for premises located in the vicinity of fairs and markets.**

## Chapter 5 – Sanctions, penalties and enforcement

- 5.1 Various offences, attracting a variety of penalties and sanctions, have been created under the Licensing Acts 1833 to 2004. It is hardly surprising then that fine and penalty levels vary from one statute to another, and from one category of offence to another. The Group believes that greater consistency in this area would enhance fairness and improve effectiveness.
- 5.2 While the Group accepts that enactment of the Sale of Alcohol Bill will in due course provide the opportunity to overhaul comprehensively and update penalties, it considers that there is scope for increasing penalty levels in forthcoming legislation. This applies in particular to offences relating to drunkenness, disorderly conduct and the provision of alcohol to under-age persons. While the Group does not wish to curtail the discretion of the Courts by, for example, setting minimum levels of fines, it considers that penalty levels should reflect the gravity of the offence in each case and repeat offending should attract higher penalties.
- **The Group recommends that fines for offences involving drunkenness, disorderly conduct and the provision of alcohol to under-age persons be increased towards maximum District Court levels.**

### Temporary closure orders

- 5.3 Licensing law contains strict provisions relating to the endorsement of licences in the case of convictions for serious offences which could in certain circumstances lead to loss of the licence (Part III of the Intoxicating Liquor Act 1927). Because of its potential severity, recourse to this sanction has become much less frequent over the years. While the Intoxicating Liquor Act 1988 provided for endorsement of licences in cases of convictions for sale of alcohol to under-age persons, the Intoxicating Liquor Act 2000 replaced these endorsement provisions with mandatory temporary closure orders. It was intended that temporary closure of premises would prove to be a more effective deterrent, but this has not proved to be the case.
- 5.4 Provision has been made in the Intoxicating Liquor Acts 2000 and 2003 for mandatory temporary closure orders in cases of conviction for certain offences, e.g. sale of alcohol to under-age or drunken persons; permitting disorderly conduct. Such orders may not exceed 7 days for a first offence and between 7 and 30 days for a second or subsequent offence. However, the legislation does not specify any minimum period with the result that courts have been persuaded in certain cases to impose (or to reduce on appeal), closure periods which render the penalty almost meaningless. Cases have been reported in the media where, for example, a 2-day closure order has been reduced to a matter of hours. Reductions of this nature do not appear to be in line with the intentions behind the legislation which require, for example, that staff be paid during closure periods and that a notice specifying the period of closure, and stating that the closure is in compliance with a court order, be affixed to the exterior of the premises in a conspicuous place. The Group believes that a minimum closure period of 2 days should be introduced.
- **The Group recommends a minimum closure period of 2 days in the case of temporary closure orders for a first offence.**

## Drunkenness and disorderly conduct on licensed premises

- 5.5 The Intoxicating Liquor Act 2000 updated the law relating to drunkenness and disorderly conduct in licensed premises. Section 4 prohibits the supply of alcohol to drunken persons. Licensees are required not to permit drunkenness in the bar of licensed premises, or to admit drunken persons to the bar. Moreover, a person who is drunk on leaving licensed premises is presumed until the contrary is proved, to have become drunk while on those premises. A drunken person is defined as a person who is intoxicated to such an extent as would give rise to a reasonable apprehension that the person might endanger himself or herself or any other person. A licensee convicted of an offence under section 4 is liable to a fine and a mandatory temporary closure order.
- 5.6 The Act also makes it an offence for persons other than the licensee to supply alcohol to drunken persons (section 5) and provides that a drunken person shall leave the licensed premises on being requested to do so by the licensee or a member of the Garda Síochána (section 6). Failure to leave on being requested to do so is an offence.
- 5.7 A licensee who permits disorderly conduct on licensed premises commits an offence under section 7 of the 2003 Act, as do persons engaging in such conduct. A licensee convicted of an offence under section 7 is liable to a fine and a mandatory temporary closure order.
- 5.8 The Courts Service has supplied the following data in respect of temporary closure orders made by the District Court for offences under sections 4 and 7 of the 2003 Act:

**Table 6: Temporary Closure Orders, 2005-2007**

Year	Section 4	Section 7
2005	1	0
2006	3	0
2007	4	0

*Source : The Courts Service*

- 5.9 These data indicate that increased enforcement of statutory provisions relating to drunkenness and disorderly conduct within licensed premises is urgently required. While many of those who leave licensed premises in a drunk or disorderly state are prosecuted under sections 4 and 5 of the Criminal Justice (Public Order) Act 1994 for drunkenness or disorderly conduct in a public place, the licensed premises in which they became drunk or disorderly escape the sanctions set out in licensing law. The Group notes that section 18 of the Intoxicating Liquor Act 2003 permits a Garda, whether in uniform or not, to enter any licensed premises at any time and make such inspection, examination, observation and enquiry as he or she may think proper for the prevention or detection of offences under licensing law.
- **The Group recommends that non-uniformed Gardaí be deployed in order to detect and prosecute the offences of permitting drunkenness and disorderly conduct in licensed premises.**

## **Public Disorder**

- 5.10 Statutory provisions concerning public order offences are set out in the Criminal Law (Public Order) Acts 1994 and 2003. The Group notes the valuable research carried out by UCD's Institute of Criminology for the National Crime Council which has identified locations most likely to experience public disorder and the times at which it takes place. This enables the Gardai to focus their enforcement activities to best effect.
- 5.11 From the point of view of crime prevention there are a number of issues to consider. These include how to design public houses, nightclubs and streets so that the potential for violence and disorderly conduct is reduced; and how public transport links and urban planning may contribute to disorder. There is a large amount of experience in other jurisdictions of designing solutions to the problems presented by night-time economies and the Group considers that the Department of Justice, Equality and Law Reform should explore the extent to which insights gained elsewhere might be relevant in this country.
- 5.12 National trends undoubtedly mask areas where there are significant problems and others where there are not. It is important to tease out the extent to which local policing, prosecuting and sentencing practices contribute to these differences.

## **Criminal Justice (Public Order) Act 1994**

- 5.13 The 1994 Act creates public order offences of intoxication in a public place (section 4), disorderly conduct in a public place (section 5) and threatening, abusive and insulting behaviour in a public place (section 6).
- 5.14 The Group is pleased to note that section 184 of the Criminal Justice Act 2006 amends the 1994 Act to permit a fixed penalty procedure in relation to lesser public order offences as an alternative to proceedings being taken in the first instance. Specifically, section 184 inserts two new sections into the 1994 Act, sections 23A and 23B, which apply the new procedure to offences under section 5 and section 4 respectively.
- 5.15 The Group notes that the fixed charge procedure for offences under section 4 and section 5 are constructed differently to reflect the fact that the Gardaí already had a power of arrest under the 1994 Act in relation to section 4 offences (section 24). For this reason, a power of arrest has been provided in section 23(A) so as to take account of a situation where the person is not co-operating with the Gardaí in the provision of his or her personal details.
- 5.16 The new procedure will be broadly similar to the fixed penalty procedure in respect of road traffic offences whereby a person charged with a relevant offence is issued with a written notice indicating that if he or she pays the appropriate penalty a prosecution before the courts will be avoided. At present, a person found guilty of an offence under section 4 is liable on summary conviction to a fine not exceeding €127, while a person guilty of an offence under section 5 is liable on summary conviction to a fine of €635. The Group is pleased to learn that the Department of Justice, Equality and Law Reform is in consultation with the Gardaí with a view to finalising arrangements for implementation of these provisions as soon as possible

- **The Group recommends implementation of the fixed penalty procedure for offences under sections 4 and 5 of the Criminal Justice (Public Order) Act 1994 as soon as possible.**

5.17 Section 4 of the 1994 Act permits a Garda to seize or remove any bottle or container which the Garda has reasonable cause to believe contains an intoxicating substance from a person whom the Garda reasonably suspects of committing an offence under sections 4, 5 or 6. This seizure power applies to offences under sections 5 and 6 only where the Garda has reasonable cause to suspect that the bottle or container, and its contents, are relevant to the offence which he or she suspects is being committed.

### **Criminal Justice (Public Order) Act 2003**

5.18 The Criminal Justice (Public Order) Act 2003 permits the District Court to make ‘exclusion orders’. On conviction of a person for certain offences under the 1994 Act, including section 4, 5 and 6 offences, the Court may make an order to prohibit that person from entering or being in the vicinity of certain premises, including both licensed premises and food outlets, between such times and during such a period as the Court may specify.

5.19 The 2003 Act also makes provision for ‘closure orders’. It permits a member of the Garda Síochána not below the rank of inspector to apply to the District court for a closure order in respect of licensed premises or a food outlet if there has been disorder either on, or in the vicinity of, the premises involving people who were on the premises and such disorder is likely to recur. If the Court is satisfied that disorder has occurred and is likely to recur and the making of an order is necessary to prevent a recurrence, it may make such an order in respect of the premises concerned. Closure may not exceed 7 days for the first such order and not less than 7 nor more than 30 days in the case of a second or subsequent order.

5.20 The Group has been unable to obtain data on numbers of ‘exclusion’ and ‘closure’ orders made under the 2003 Act and while it may be effective to the extent that it has a ‘preventative’ impact, the lack of data appears to suggest that less use has been made of its mechanisms than was intended. It appears that prosecutions brought by the Gardaí under the Act against food outlets under the Act in 2007 were not successful on the grounds, inter alia, that the disorder which occurred could not be attributed to the food outlet. A review of the Act and its enforcement mechanisms would, therefore, appear to be warranted.

- **The Group recommends a review of the operation of the Criminal Justice (Public Order) Act 2003 with a view to identifying its shortcomings and improving its effectiveness.**

### **Local authority bye laws**

5.21 Powers have been given to local authorities in Part 19 of the Local Government Act 2001 (previously Part VII of the Local Government Act 1994) to make bye laws relating to the use, regulation or management of land, services or any other matter under their control or management. More detailed provisions are set out in the Local Government

Act 2001 (Bye-laws) Regulations 2006 (SI No. 362 of 2006). The Group welcomes the fact that many local authorities have already used these powers to make bye laws regulating and controlling the consumption of alcohol in public places within their functional areas. In general, these bye laws prohibit the consumption of alcohol in public places, and also the possession of alcohol with the intention of consuming it in such places, or supplying it to others for such consumption.

5.22 These bye laws also confer enforcement powers on the Gardaí, including powers to stop and search, and powers of seizure and confiscation of bottles or containers containing alcohol. Local authority staff may also be conferred with certain enforcement powers. Any person who contravenes a bye law provision is guilty of an offence and is liable on summary conviction to a fine. A fixed payment penalty may be available in certain cases as an alternative to prosecution (section 206 of 2001 Act).

5.23 The Group welcomes a recent High Court judgment which has upheld the validity of local authority bye laws prohibiting the consumption of alcohol in public places. The judicial review in this case arose from a prosecution under bye laws made by South Dublin County Council. The High Court found that the Oireachtas was entitled to enact legislation giving local authorities powers to regulate activities in their areas and that this was not unconstitutional.

➤ **The Group recommends that local authorities that have not already made bye laws prohibiting the consumption of alcohol in public places do so with a view to preventing alcohol-related public disorder in their areas.**

5.24 An issue has arisen as to whether the statutory power to make bye laws contained in the legislation referred to above could be used to regulate the closing times of certain categories of non-licensed premises, e.g. fixed or mobile fast food outlets, where large numbers of people can congregate after leaving licensed premises. Queuing for food can give rise to noise and nuisance and may, in certain cases, lead to public disorder and violent behaviour. The Group understands that specified closing times have been imposed on such premises in certain cases by planning authorities as part of the planning permission process. Such restrictions do not apply in cases where planning permission has not specified closing times.

5.25 The Group considers that in the absence of specific statutory provisions in this area, the scope of bye laws under the 2001 Act may extend to regulation of the closing time of non-licensed premises where restrictions have not been imposed as part of the planning permission process. Section 199 permits local authorities to make such bye laws in order to regulate an activity or to control or suppress any nuisance “where in its opinion it is desirable in the interests of the common good of the local community”. This only applies where a more specific regulatory power is not available under other legislation. In this case, the Group is not aware of any other statutory power to regulate the closing times of non-licensed premises and recommends, therefore, that the matter be regulated under appropriate bye laws.

➤ **The Group recommends that the closing times of non-licensed premises be regulated where necessary in local authority bye laws under Part 19 of the Local Government Act 2001.**

## General enforcement issues

- 5.26 Enforcement of the licensing laws is primarily a matter for the Gardaí. Many of the submissions received by the Group conveyed concerns in relation to the level and extent of such enforcement. On the other hand, when there is an adequate Garda presence at events such as concerts and festivals, the events tend to run smoothly and there are fewer public order offences.
- 5.27 Reference has been made earlier in this Report to initiatives taken by the Gardaí – in cooperation with other stakeholders in some cases – in places such as Cork, Tralee and Letterkenny. The Group welcomes the fact that the local District Courts have taken the concerns of the Gardaí in relation to public order offences into account when granting special exemption orders. It appears that reductions in the duration of such orders have contributed to reductions in public order offences in the areas concerned. The Group welcome the exercise of judicial discretion in such cases, as provided for in the relevant legislation, and believes that a similar approach should be adopted in other areas where similar problems are encountered.
- 5.28 The public continue to be disappointed at the apparent failure to identify and bring to prosecution many offenders for breaches of the licensing laws. The ease with which under-age persons can purchase alcohol was highlighted again recently on television. (Prime Time, RTÉ, February 2008). This points to the need for a more determined enforcement of the licensing laws by the Gardaí. It appears that in some cases, the parents of under-18s to whom alcohol has been sold may be reluctant to have them appear in court to give evidence and be cross examined by legal representatives of the alleged offender. While this may be understandable in some cases, such a practice if adopted widely could seriously undermine the enforcement efforts of the Gardaí. Earlier in this Report, the Advisory Group has recommended implementation of a test purchasing scheme in order to improve detection of licensees who are prepared to sell alcohol to under-18s. This scheme will contain necessary safeguards and the Group is hopeful that it will improve enforcement in this important area.
- 5.29 The Group has no wish to involve itself in operational matters relating to the Gardaí. Nevertheless, given the complexity of the licensing laws, the Group suggests that in each Garda area there should be a designated officer to whom responsibility would be allocated for monitoring and co-ordinating enforcement of the licensing laws and related initiatives. Moreover, consistency in approach across areas should be ensured through adequate monitoring.
- **The Group recommends that the Garda Commissioner should appoint an officer in each Garda area with responsibility for monitoring and co-ordinating enforcement of the licensing laws and related initiatives in that area; overall consistency of approach across the country should be monitored.**
- 5.30 As regards the penalties imposed for breaches of the licensing laws, the Group firmly believes that they must be sufficiently large to constitute an effective deterrent to further breaches. If that is not the case, those who are convicted of licensing offences may find it worthwhile to continue as before. The Group notes that introduction of mandatory temporary closure orders in addition to fines for certain licensing offences in the Intoxicating Liquor Acts of 2000 and 2003 was intended to increase the severity of penalties but it does not appear to have achieved this objective.

- 5.31 The level of penalties imposed in any particular case is, subject to relevant legislative provisions, a matter for the courts. This is a fundamental feature of our legal system. The Group was dismayed nonetheless to learn of a recent case where a relatively modest 2-day closure order imposed by the District Court was reduced on appeal to a matter of hours. The Group is concerned that a lack of consistency of approach risks undermining public confidence in and support for enforcement of the licensing laws.
- 5.32 The Group is grateful that members had the opportunity to meet with judges both of the Circuit Court and the District Court. A useful and interesting exchange of views took place during these meetings. Their insights into the operation of the licensing laws and how they might be improved was very valuable to the work of the Group
- 5.33 The Group is also anxious to ensure that the penalties which are set out in the relevant legislation are not inadequate and, therefore, ineffective. It is for this reason that the Group has recommended increases in existing penalty levels earlier in this Report.

## **Chapter 6 – Related matters**

- 6.1 In this chapter the Group draws attention to a number of matters which fall outside its terms of reference but which it wishes to bring to the attention of relevant Government Departments and public bodies.

### **Excise Duties**

- 6.2 Tackling the impact of alcohol consumption on public health and public order depends on reducing overall levels of alcohol consumption rather than shifting patterns of purchasing. It seems clear from international studies that decisions to purchase alcohol are sensitive to both availability and price. One readily available means of addressing the price aspect is through the taxation system as advocated by the Strategic Task Force on Alcohol, including lower taxation on lower alcohol products.
- 6.3 Ireland's excise duties, which are applied to all alcohol products, are already among the highest in Europe. Ireland has the highest excise duties on wine and second highest for spirits and beer. There has not been any increase in excise duties on alcohol since 2002 when spirits – in particular, 'alcopops' – were targeted. In the context of the 2008 Budget, the Department of Finance received a request from the Health Service Executive for a 10% increase in excise duties on all alcohol products. In considering the HSE request, the Department of Finance took account of existing excise duty levels and did not accede to it.
- 6.4 The Group notes that the increase in excise duties on spirits in 2002 was followed by a significant fall in the consumption of spirits in the following year. Since then, consumption of spirits has increased again. The merits of selectively using excise duties to target certain alcohol products with a view to reducing consumption should not be overlooked. Focusing on certain types of alcohol products has been effective in reducing consumption in the past and the Group recommends further targeted action of this kind in the future.
- 6.5 In 2004 the Strategic Taskforce on Alcohol recommended the promoting and making available of alcohol products with lower alcohol content. Currently, products with low alcohol content, such as beers with less than 3% alcohol, are not readily available in Ireland. The Group would favour imposition of a lower rate of excise duty on beers with an alcoholic strength of less than 3%.

### **Soft Drinks**

- 6.6 A matter of concern to the Group is the cost of soft drinks in public houses, hotels etc. It appears that the cost of such drinks exceeds in many cases the cost of an equivalent amount of stout or beer. This is difficult to understand since excise duty does not apply and the costs of production must be much lower. On enquiry as to why siphons, etc. were not made available here, licensed trade representatives stated that the manufacturers and suppliers would not provide these (as they do, for example, in the UK). While the Group is not aware of profit margins on soft drinks, it considers that the matter is sufficiently serious as to warrant detailed investigation. The Group notes that the Strategic Task Force on Alcohol called for such an investigation in 2004.

## **Planning issues**

- 6.7 In 2005, the Minister for the Environment, Heritage and Local Government made regulations under the Planning and Development Act 2000 which introduced a new planning permission requirement for off-licences. Previously, the conversion of an existing retail outlet into an off-licence did not require planning permission. While the revised rules apply to off-licences and to mixed trading premises seeking licences for the sale of spirits and beer, there is no planning permission requirement for mixed trading premises selling wine only. The Group regrets that premises with wine retailer's off-licences are exempt from the general planning permission requirement and calls for a review of the relevant provisions to address this shortcoming.
- 6.8 The Group has more general concerns relating to the planning system and the sale of alcohol. Section 10 of the Planning and Development Act 2000 deals with the content of development plans which must be drawn up by all planning authorities. It requires such authorities to set out an overall strategy for the proper planning of their areas and to make set specific objectives in certain areas, e.g. land zoning and use; the integration of planning with the social, community and cultural requirements of the area and its population. The Group supports the statutory requirement on planning authorities to adopt a strategic approach to these and other quality of life issues in their development plans. It considers however that a similar strategic approach needs to be taken in development plans to the location of licensed premises. Licensed premises, whether with on-licences or off-licences, are potential sources of noise, nuisance and disturbance and planning law should seek to address this in terms of permitted size, location and density.
- 6.9 Compliance with planning conditions which may accompany the grant of planning permission for licensed premises is another matter which needs to be addressed urgently. The Group is satisfied that the enforcement of such conditions is lax at best. It therefore supports proposals in the forthcoming Sale of Alcohol Bill which provide that the District Court shall not grant a certificate, unless satisfied on the basis of certification by a suitably qualified person that all such conditions have been, and are being, complied with.

## **Alcohol Advertising**

- 6.10 A voluntary code on the marketing and advertising of alcohol is in place since 2005. This was agreed between the Department of Health and Children and representatives of the drinks and advertising industries. The 2006 Annual Report of the Alcohol Marketing Communications Monitoring Body, which was established to monitor compliance with the Voluntary Codes, was submitted to the Minister for Health and Children in July 2007. Following consideration of the Report, that Department commenced discussions with representatives of the drinks and advertising industries with a view to strengthening and expanding the voluntary codes on alcohol marketing and communications in order to provide significantly greater protection for children and young people. These discussions resulted in the drafting of revised codes on advertising and sponsorship. The Group understands that the Minister for Health and Children is currently considering how best to move forward in this area.

- 6.11 The Group acknowledges the willingness of the drinks and advertising industries to engage in the development of voluntary codes with the Department of Health and Children. The Group also notes the work undertaken by MEAS (Mature Enjoyment of Alcohol in Society) which is a body funded by the alcohol industry and which deals, among other matters, with complaints against promotions, advertising, etc. The main weakness with such voluntary arrangements is that they depend on the support and goodwill of all involved and there are no effective sanctions when individual licensees decide not to abide by them. That is why, despite the best efforts of those who subscribe to voluntary codes, legislation may prove necessary to ensure that the required standards are respected in all cases.
- 6.12 The Group did not consider drink sponsorship as it was not part of its remit.

### **Social networking websites**

- 6.13 Possible connections between social networking websites such as Bebo, MySpace and Facebook and alcohol consumption has been brought to the attention of the Group. The risks of bullying, intimidation and harassment on such sites have already been brought to public attention. Another risk which the Group wishes to highlight is that of young people being influenced by the profiles of other site users who glamorise alcohol consumption, drug taking and anti-social behaviour. It is also possible, for example, for a young person to become 'friends' with a particular product and create a link with the product's web site. Moreover, users may be targeted with particular advertisements and sponsored links.
- 6.14 Such sites may also be used to publicise events in licensed premises which are organised for special events, e.g. release of state examination results, and are directed at the young people concerned. Publicity material may include details of various alcohol promotions, e.g. reduced prices or free 'shots', which encourage binge drinking. The Group has not been in a position to investigate the problem in full and is unable therefore to make specific proposals to address it. Any future initiative in relation to advertising should also apply to advertising on these web sites.
- 6.15 The Group welcomes the publication recently by the Internet Advisory Board of a parents' guide to social networking web sites entitled 'Get With It'. Parents and others who are interested in this area will find the booklet both interesting and informative on matters relating to the content and operation of such sites (available to download at [www.iab.ie](http://www.iab.ie) or on request from [getwithit@justice.ie](mailto:getwithit@justice.ie)).

### **Education and youth facilities**

- 6.16 The educational needs of young people vary depending on age and other factors. However, organisations representing young people and their interests are agreed that such education should aim at making young people self-reliant and able to resist peer pressure. This is of paramount importance.
- 6.17 The problem of binge drinking among young people has grown rapidly and it is difficult to see that the education system's response has kept pace with developments. The Group has not had the time to explore this matter in depth and, in any event, it goes beyond the terms of reference. However, the Group recognises the important role of the

education system and the need for ongoing appraisal of the manner in which the dangers of alcohol misuse are imparted in schools and other educational institutions.

Independent appraisal of programmes such as the Junior Cycle Social Personal Health Education Programme (SPHE) is vital in order to ensure that the content and presentation of material is relevant and effective. Concerns relating to the operation of social networking websites have already been raised and these are matters which also need to be addressed in the education system.

- 6.18 The Group was also concerned to learn of promoters who use contacts in secondary schools to promote events taking place in licensed premises to coincide with sporting events. These events are designed to appeal to young people and there are substantial risks that they will result in alcohol misuse. Schools have an important role to play in combating such practices.
- 6.19 The Group recognises and applauds the work undertaken by the many organisations and individuals who organise alcohol-free events and activities for young people. Organisations such as the No Name Club provide attractive entertainment in an alcohol free environment for young people and the Group supports the provision of funding and support for their activities. The provision of facilities where young people can meet and interact socially in an alcohol-free environment also needs to be supported.
- 6.20 It is only recently that Government funding for such became available. Every effort should be made to promote such organisations and to give them every assistance possible.

## **Transport**

- 6.21 Whenever large numbers of people leave licensed premises in the early hours of the morning, there is a risk of public disorder until they disperse. As mentioned earlier in the report (paragraph 5.11), the provision of good public transport can assist in preventing disorder. Local initiatives addressing transport needs can play an important role in providing solutions to this problem. The Group considers that further efforts are required to address transport deficits.

## **Suicide and Alcohol**

- 6.22 The Advisory Group is aware of the evidence which shows that alcohol and substance abuse are strongly related to suicide and deliberate self-harm. However, the connection between alcohol misuse and suicide was not an issue that came within the Group's terms of reference. The Group is aware of the work of the National Office for Suicide Prevention (NOSP) which oversees the implementation of "Reach Out" – A National Strategy for Action on Suicide Prevention. Among the key actions to promote suicide prevention are: developing and implementing national training programmes, completing the availability of self-harm services through hospital accident and emergency departments, developing mental health awareness campaigns and supporting organisations working in the field of suicide prevention.

**Members of the Government Alcohol Advisory Group**

Dr Gordon Holmes, Chairman

Dr Declan Bedford, Specialist in Public Health Medicine, Health Services Executive

Mr Robbie Breen, Department of Health and Children

Mr Seamus Carroll, Department of Justice, Equality and Law Reform

Professor Ian O'Donnell, Criminologist, University College Dublin

Chief Superintendent John Twomey, An Garda Síochána

Secretary to the Group:

Kathleen Connolly, Department of Justice, Equality and Law Reform

## Government Alcohol Advisory Group

### Call for submissions

The recently-established Government Alcohol Advisory Group is examining the following matters:

- the increase in the number of supermarkets, convenience stores and petrol stations with off-licences and the manner and conditions of sale of alcohol products in such outlets, including below unit-cost selling and special promotions;
- the increasing number of special exemption orders which permit longer opening hours which are being obtained by licensed premises around the country; and
- the use, adequacy and effectiveness of existing sanctions and penalties, particularly those directed towards combating excessive and under-age alcohol consumption.

Submissions on the above matters are invited from interested parties and the general public.

The Group is required to report to the Minister for Justice, Equality and Law Reform by 31 March 2008. Consequently, it is necessary to receive submissions by 5.00pm on 28 January 2008.

Please forward submissions by email to [kmconnolly@justice.ie](mailto:kmconnolly@justice.ie) or by post to the Secretary, Government Alcohol Advisory Group, 5th Floor, Block 1, Irish Life Centre, Lower Abbey Street, Dublin 1.

## Response to the Group's call for submissions

Total of 190 submissions were received by the Group a number of which (32) were forwarded by the office of the Minister for Justice, Equality and Law Reform.

### Health Interests (19)

Addiction Psychiatrists Consultant Group  
Adelaide Hospital Society  
Dr Farren, Consultant Psychiatrist  
Dr Moane, Lecturer in Psychology  
Dr O'Dea, Family Doctor, Co Carlow  
Fetal Alcohol Spectrum Disorders Ireland  
Health Research Board  
Health Service Executive  
Health Service Executive, West Region  
Institute of Public Health Ireland  
Irish College of General Practitioners  
Irish Medical Organisation  
Killarney Drugs Liaison Committee, Co Kerry  
Mr Hickey, Psychotherapist  
National Drugs Strategy Team  
Norman Warden, Psychotherapist  
Royal College of Physicians of Ireland (Faculty of Public Health Medicine)  
The Women's Health Council  
University of Limerick, Campus Alcohol Working Group

### Industry submissions (28)

Alcohol Beverage Federation of Ireland  
Anheuser-Busch (Budweiser)  
BWG Foods Ltd.  
Galhoy Inns Ltd, Kildare  
GWL Group (Gavins Wholesalers Ltd)  
Griffen Hotel Group, Wexford  
Irish Craft Brewer  
Irish Hotel Federation  
Irish Nightclub Industry Association  
Lidl Ireland GmbH  
Londis  
Mature Enjoyment of Alcohol in Society  
Mike Fagan, Off Licence  
Musgrave Group and Musgrave Retail Partners Ireland  
National Off Licence Association  
Outdoor Media Association  
O'Riordan Pubs, Kildare  
Red House Bar, Waterford

Retail Ireland  
RGDATA  
Superquinn  
Tesco Ireland  
Traders in the Area Supporting the Cultural Quarter (trading as TASCQ) Dublin 2  
The Beverage Council of Ireland  
The Convenience Stores and Newsagents Association  
The Licensed Vintners Association  
The Molloy Group  
The Vintners Federation of Ireland

### **Submissions from Other Organisations (46)**

Administrator of Non Drinkers' Group, Co Carlow  
Alcohol Action Ireland  
An Garda Síochána  
Ballybrack Tidy Towns, Co Dublin  
Ballybrack-Killiney Parish Pastoral Council, Co Dublin  
Barnardos  
Brian Morton Solicitor  
Cabra Residents, Dublin  
Carpenterstown Park Residents' Association, Dublin  
Catholic Communications Office, Irish Bishops' Conference  
Collins Crowley Solicitor  
Comhairle na Réadóirí, Deisceart Cho. Mhuineacháin  
County Donegal Vocational Education Committee  
Crosscare Drug & Alcohol Programme  
Donabate Neighbourhood Watch, Co. Dublin  
Dublin 15 Community Council  
Dublin City Council Working Group on Alcohol and Public Order  
Fingal Community & Voluntary Forum  
Give Us the Night  
Hughes, Kehoe & Company , Solicitors  
Irish Bishop's Drug Initiative  
Kilkee Chamber of Commerce  
Knochnacarra Residents Group, Co Galway  
Leitrim Youth Project of North Connacht  
Loreto Parents Association, Kilkenny  
Maigue Cluster, Limerick  
Mallow Joint Policing Committee  
Mayfield East Community Association, Cork  
Mohill Family Support Centre, Leitrim  
National Youth Council of Ireland  
North Brunswick Residents, Dublin  
Non Drinkers' Forum  
North West Alcohol Forum Ltd  
Rapture TV, UK Television Limited  
Sinn Féin  
South Dublin County Council Joint Policing Committee

Temple Bar Cultural Trust  
 The Capuchin Temperance Commission  
 The Competition Authority  
 The Consumers' Association of Ireland  
 The Equality Authority  
 The Passionists, Co Dublin  
 The Pioneer Association  
 The Pioneer Total Abstinence Association, Ballyjamesduff, Co Cavan  
 The Pioneer Total Abstinence Association, East Cavan Region  
 Youth Work Ireland

### **Submissions from Individuals (97)**

Aidan O'Sullivan	Wicklow
Andrew Mc Ginn	
Angela Kiely	Dublin
Annette Hannigan	Cork
Anonymous submission	
Barbara Phillips	Galway
Bernadette O'Connor	Meath
Bertie Swanton	Limerick
Billy Walton	Kilkenny
Brendan Ryan	
Brian Boyle	
Brian Flynn	
Catherine O'Brien	
Charlie Madden	Cork
Ciaran Reaney	
Colin Matthews	
Con Doherty	Kildare
Danny Browne	Limerick
Dave Muldoon	
David Lafferty	Dublin
Denise Finn	
Derek Hollingsworth	Dublin
Dermot Stokes	Dublin
Eamonn T Keating	Waterford
Edward McBride	
Eimear Hoeizie	Kildare
Frances Masfield	
Frank Kelly	Donegal
Garvan Mc Feeley	
Gary Mulvhill	
Gerard Lee	
Jill Morton	
Jim Cuddy	
Joan Cassidy	Mayo
Joe Conway	Waterford
Joe Fahy	Galway

Joe O'Neill	Galway
John Donnelly	
John Dowling	Carlow
John Flood	Wicklow
John Joe McCarthy	Cork
John Mallon	Cork
John O'Connor	Cork
John O'Gorman	Limerick
John Taaffe	
Johnny Keogh	Dublin
Joseph Keogh	
Justin Hennelly	Kildare
K Mullaney	Wicklow
Keith Cullen	
Kevin McCarthy	
Larry Dunne	
Larry Foristal	
Maggie Blackley	
Mairead O'Carroll	
Marian Burke	Dublin
Mary F McCahill	Roscommon
Mary McGilloway	
Maureen Lyons	Limerick
Maurice Fitzgerald	Cork
Maurice Reedy	Kerry
Michael J Dean	Mayo
Michael McCullagh	Galway
Michael R Cottrell	Cork
Mike	
Mr Billy Kelleher, TD	
Mr Cassidy	Mayo
Ms Marie Hoctor, TD	
Nick Brophy	
Noel Collins	Roscommon
Noel Geary	Dublin
Non- Drinker/ Pioneer	
Pat Cahill	Dublin
Pat Favier	Kerry
Pat Lyons, School Principal	Dublin
Patricia Kavanagh Brown	
Patrick Joseph McCarthy	
Patrick O'Brien	Westmeath
Paul Cassidy	Monaghan
Paul Farell	Dublin
Phelim Connolly	
Ronan Burtenshaw	Dublin
Ronnie Mc Donald	Dublin
Seamus Keating	Dublin

Seamus Whitney	
Sean O'Callanóin	Dublin
Simon Walton	Cork
Sue Redmond	Roscommon
Thomas Downes	Dublin
Thomas Sharkey, CC	Louth
Tim O'Leary, CC	Kerry
Tommy Reilly, CC	Meath
Tony Murray	Donegal
Ursula Knox	
William Lavelle	Dublin
William Kingston	
William O'Driscoll,	Kerry

### **Meetings held by the Chairman with interest groups and organisations**

Oireachtas Joint Committee on Justice, Equality, Defense and Women's Rights  
Mr Brian Lenihan, TD, Minister for Justice, Equality and Law Reform  
Mr Micheál Martin, TD, Minister for Enterprise, Trade and Employment  
Ms Mary Hanafin, TD, Minister for Education and Science  
Mr Pat the Cope Gallagher, TD, Minister of State for Health Promotion,  
Alcohol Action Ireland  
Alcohol Beverage Federation of Ireland,  
Carol O'Kennedy, SC  
Diageo Ltd  
Dr Geraldine Moane, Psychologist, UCD  
Fine Wines, Limerick  
Heineken Ltd  
Hotel Federation of Ireland  
Irish Nightclub Industry Association  
Limerick Garda Síochána  
Musgrave Directors  
National Off-Licence Association  
National Youth Council of Ireland  
No Name Clubs  
O'Brien Fine Wines  
Office for the Minister for Children  
Peter Cassells, Chairperson, Social Partnership Working Group on Alcohol Misuse  
Retail Ireland  
Rutland Centre  
Superquinn Ltd  
The Garda Commissioner  
The Licensed Vintners Association  
The Vintners' Federation of Ireland  
Youth Work Ireland