

# Independent Review of the Liquor Licensing System in Northern Ireland including the Surrender Principle

## Executive Summary

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August 2024



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## Executive Summary

### About this review

This report summarises the findings and recommendations of an independent review of the Northern Ireland liquor licensing system, which is the system under which premises are awarded a licence to allow them to sell alcohol. The review was established by legislation which set out the requirements for the review (Box 1) and was led by the University of Stirling with researchers from the Universities of Sheffield and Edinburgh. The review was fully independent and the findings and recommendations reflect the views of the review team and not necessarily those of any other party.

We are grateful to everyone who offered time, expertise and experience to support our work. It has been our privilege to engage with people from so many organisations and communities across Northern Ireland, and to experience both the hospitality and commitment of people working in this sector. We recognise that there are competing aspirations for this review among those to whom we spoke, and that no system or set of proposals will fully meet everyone's hopes. However, we have aimed to deal fairly with all stakeholders and to arrive at conclusions that reflect a carefully considered and balanced view of the evidence, experiences, and opinion gathered by us in the past two years.

### Box 1: The Licensing and Registration of Clubs (Amendment) Act (Northern Ireland) 2021: Section 23 (extract).

- An assessment of the operation of the surrender principle, an examination of options for reforming it and an assessment of the implications of those options for licence holders.
- An analysis of the geographical distribution of licensed premises in Northern Ireland.
- An analysis of the economic and social impact of the licensing system and the impact of the licensing system on personal and public health.
- An assessment of the extent to which the licensing system meets consumer demand and local community needs, when set alongside the impact it has on personal and public health and on public order.
- Whatever recommendations for improving the licensing system that the reviewer considers appropriate.

### Summary of Main Methods (conducted Sept 2022 – Aug 2024)



#### 45 stakeholder interviews:

(businesses, regulators, professionals, elected members, police, treatment providers and health services).



#### In-person, in-depth visits to eight communities:

visits to >60 pubs; meetings with >50 hospitality & retail owners & staff; and 11 community focus groups with 101 participants.



#### Reviews of international literature on licensing system

impacts, implementation and other legislative systems for capping availability.



#### Analysis of the location and volume of premises

(density) and relationship with alcohol-related deaths, hospital admissions and crimes.



#### Modelling of the potential impact of reform options on hospitalizations and deaths.



#### Consultation with 2 groups of leading international experts.



#### Manual review of over 1,700 licensing records to create

database tracking licence movement and expiration.



#### Analysis of the economic impacts of licensed

businesses using ONS Labour Force and other routine data.

## 1. Overarching considerations

All of the findings of our review, including the health, social and economic impacts of the current licensing system, and the extent to which it meets the needs of consumers, licence holders, the pub sector as a whole and a range of other stakeholders have shaped our thinking and recommendations below. While we summarise key points below, we recommend that anyone seeking to fully understand our conclusions reads the full report. We have set out an ambitious suite of proposals and recognise that not all may be feasible in the short term. We therefore wish to emphasise the following key points for those considering the way forward:

- Where matters of fundamental principle are concerned, it remains for the elected representatives of the community at large to determine what the goals of the licensing system should be – and, ultimately, which of the proposals set out here align with those goals.
- We set out below multiple, deep-seated problems in the current design and operation of licensing system, which we seek to address through our recommendations.
- Under the current system, incumbents are protected from competition by high barriers to entry. Latent demand for new products or venue types cannot therefore be tested.
- The current system creates barriers and protections that are unlikely to foster the levels of innovation and diversification necessary for the on-trade sector, and wider cultural, tourism and leisure industries, to adapt to current challenges and maximise future opportunities.
- Pub numbers are falling, while off-licence numbers increase, which is likely to worsen health outcomes, even as the numbers of people experiencing and dying from alcohol-related harms are high in Northern Ireland.
- Many of these problems have also been highlighted in previous reviews and consultations going back many years. Choosing to retain the current system unchanged would mean accepting that those problems will remain a fixed feature of the licensing system in Northern Ireland going forward. It would mean choosing to protect incumbent licence holders over taking action to

enable the pub sector as a whole to diversify and thrive. That choice needs to be clearly acknowledged if it is decided to retain the system in its current form.

## 2. The licensing system in Northern Ireland

In Northern Ireland (NI), as in many other places, it is illegal to sell alcohol without a ('liquor') licence. Whereas the licensing systems in England/Wales and in Scotland were overhauled in 2003 and 2005 respectively, the NI system remains based on principles formalised in, but predating, 1923. It remains similar to the system adopted in (the Republic of) Ireland at the same time. Anyone wanting to open a new premises selling alcohol must apply for a licence and decisions on applications are made by the courts.

The most distinctive feature of the NI system is the so-called 'surrender principle', which applies to pubs (including bars) and off-licences. Under this system, a new pub or off-licence can only be opened if an existing premises closes down and 'surrenders' its licence, which is purchased by the new premises. In effect, this creates a one-in-one-out system that, in theory at least, keeps the total number of pubs and off-licences stable. Notably, a pub licence can be surrendered to someone wishing to open an off-licence, or vice versa.

The 'surrender principle' does not apply to the other types of premises licensed or registered to sell alcohol, as set out in legislation. This means that restaurants, hotels, guest houses, conference centres, registered clubs and other premises types can sell or supply alcohol without the need to acquire a surrendered licence before opening. As a result, the number of these premises can go up regardless of the total amount already in operation.

### 3. Setting a purpose for alcohol premises licensing

Alcohol licensing systems regulate who and/or what premises may sell alcohol, at what times, on what days, and under what circumstances in order to achieve broader societal goals, such as public safety. Unlike England/Wales and Scotland, the current licensing system in Northern Ireland is not based on explicit objectives. Therefore, the precise aims of the system are unclear. Reviewing

the licensing system provides an opportunity for the government and people of Northern Ireland reconsider the overarching principles and objectives that should guide their alcohol licensing system. It is for the people and government of Northern Ireland, rather than us as reviewers, to decide which of these it wishes to prioritise. We believe that the establishment of such objectives is a critical step in modernising the licensing system in Northern Ireland.

#### Recommendation

1. Initiate a process to agree and establish clear licensing objectives based on explicit principles.
  - a. Once agreed, these should be incorporated into existing legislation to guide and underpin licensing decisions, and they should form the basis of any substantially reformed or new system.
  - b. The process of setting objectives should take account of the findings of this review.

### 4. Health and economic impacts of the licensed trade sector

- NI has high rates of alcohol-related deaths compared to England & Wales. Death rates are comparable to Scotland. NI rates are on an upwards trend.
- NI is losing pubs at a faster rate than any region in England & Wales, though the number of pubs per person has been high historically compared to Great Britain. The number of off-licences per person is rising, though remains lower in NI than Great Britain.
- Our analysis of the volume and location of licensed premises in Northern Ireland showed that generally, a greater concentration and overall number of alcohol outlets in a given area is associated with increased risks of mortality, hospitalisations and crime.
- Both employment and turnover have fallen in the pub sector in recent years, while it has remained more stable in restaurants and hotels. Employment in the alcohol retail sector tends to be relatively low-paid and part-time.
- The promotion of positive health and social outcomes would be better served by supporting a well-managed on-trade sector, over a continued increase in the number and size of off trade premises.

#### Health and social impacts

'Density' is a term used broadly to apply to geographic areas with greater concentrations and overall numbers of alcohol outlets. Higher densities of alcohol outlets in Northern Ireland are generally linked to higher levels of associated death, hospitalisation and crime. However, we found that higher densities of off-sales premises are linked to increased overall alcohol consumption and associated health harms whereas higher densities of pubs are more closely associated with increased rates of crime.

These findings are in line with strong international evidence showing increased availability is linked to greater harms. Therefore, caution is needed in introducing any changes that would substantially increase levels of availability, especially in light of the high rates of harm already experienced in NI. Furthermore, our modelling suggests that increases in off-sales availability would produce significantly higher levels of harm than comparable increases in the number of pubs.

## Economic impacts

We analysed economic trends using the most recent data provided by the Office for National Statistics. This shows some clear patterns in key areas of the hospitality sector. Most notably, the pub sector is continuing to shrink in terms of turnover and employment. All sectors have been impacted by Covid and the cost of living crisis, but the pub sector appears to have struggled more than others. Employment in pubs is around 6,000 people, or

0.8% of total NI employment. The wider licensed trade (including licensed restaurants, hotels, specialist off-licences etc.) directly employs an estimated 27,500 people. Wages across the alcohol retail sector tend to be relatively low, and a high proportion of employment is part time. Because most of the alcohol sold in NI is produced outside of NI, the vast majority of economic activity is relevant to supply rather than production.

## 5. Co-ordination, implementation and enforcement

- Key agencies lack the capacity, knowledge and powers to enforce licensing laws comprehensively and efficiently, with the result that elements of the licensing system are implemented and enforced inconsistently.
- Certain features of the system, designed to deal with poor practice by premises including breaches of licensing laws (such as a penalty points system and licence suspensions) were reported as not working well in practice.
- Licensing conditions (specific requirements for premises such as CCTV or staff training) cannot generally applied to pub and off-sales licences which reduces opportunities for focused enforcement and flexibility within the system.
- There is in effect, no ultimate sanction for consistently irresponsible premises, except if a court declines to renew a licence, but this is almost never done and can only happen once every 5 years when premises are required to apply to renew their licences.

Police, other regulatory authorities and the general public often struggle to navigate the licensing system due to a lack of simple, clear information. There is a clear need for better guidance that goes beyond current lay summaries of the law by the Department for Communities. Many participants pointed to a lack of consistency across the system, with reports of courts applying different levels of stringency and some idiosyncratic decision-making when considering licence applications. Furthermore, written decisions are often not available following court hearings.

To address some of these issues, we propose the establishment of a central licensing authority to support applicants, the public, courts, regulators, enforcement agencies and operators in understanding, navigating and interpreting the licensing system. This would promote consistency and build capacity across the board and improve monitoring of the impacts of the licensing system. The costs of this authority should be funded through the licensing system.

It is essential that any licensing system has effective and workable measures in place to sanction licensees for contravention of the regulations and current such systems in NI were reported as relatively ineffective. This included a system of 'penalty points' for premises that breach the rules, and the potential to suspend a licence for a temporary period. Furthermore, the general lack of conditions placed on pub and off-trade licences reduces the capacity for governing authorities to tailor licence approvals to local needs, and for regulatory authorities to target their oversight of premises regarding specific risks and challenges. Our recommendations overleaf therefore look to remedy these issues.

## Recommendations

2. Establish a new Northern Ireland Licensing Authority (NILA), overseen by the Department for Communities, to enhance accessibility and consistency in the licensing system, monitor outcomes and administer key elements of a reformed system as below in line with licensing objectives. The NLA should be constituted so as to be independent of stakeholders with a financial interest in the licensing system, as a 'hub and spoke' model (see full details of functions in the main report).
3. The Department for Communities (and subsequently NILA, if established) should create and maintain a bespoke liquor licensing information website to host guidance materials, online forms, FAQs etc.
4. The law should be amended to allow conditions to be placed on pub and off-sales licences, where a clear case can be made.
  - a. Conditions should be reasonable, achievable and clearly directed at identified risks: they could be applied to individual premises; all premises in a given area; or all premises in Northern Ireland as deemed necessary by the police or other responsible authority (see Recommendation 9).
5. Training on responsible service, protecting vulnerable groups and alcohol harm for licence holders and staff working in licensed trade should be mandatory, similar to the system that exists in Scotland.
6. The law should be amended to introduce an administrative process by which licences can be reviewed on the basis of serious and/or multiple breaches of conditions, disorder or irresponsible trading.
  - a. Any responsible authority [see Recommendation 9] should be permitted to trigger and give evidence to a review, separately from the renewal process.
  - b. The possible outcomes of a licence review process could include sanctions such as additional conditions on licences, restrictions on trading hours, suspension of trading, or ultimately revocation of licences. Imposition of sanctions should not require criminal conviction of the licence holder.

## 6. Licensing records and accessibility

- The system for maintaining licence records is archaic, with records held on paper, and charge for public access.
- NI is out of step with both Great Britain and (the Republic of) Ireland, where licensing registers are digitised and available to the public online for free.
- Licence records do not routinely show where licences were surrendered from or where they were surrendered to. This makes it very difficult to track the impact of the system on licence movement.

Currently, NI is out of step with both (the Republic of) Ireland and Great Britain, where electronic, online, public registers of licensed premises are routinely and freely available. This needs to be resolved urgently. Once created an electronic database will require fewer court resources and provide greater transparency.

As long as the surrender principle is retained in any form, information on the location of premises surrendering and acquiring licences needs to be provided on licence records in order to allow trends in licence numbers and location to be tracked.

## Recommendations

7. All existing liquor licence and registered club records should be digitised and made available online, free of charge, via a public database.

Database records should include:

- a. For new licences, the location and type of licence surrendered.
  - b. For surrendered licences, the location and type of the acquiring premises.
  - c. For licences that expire, clear identification that this is an expired licence including date of expiration.
  - d. Records for all historic (e.g. expired, surrendered etc.) licences should be retained on the database to enable monitoring of changes over time.
8. In advance of digitisation courts should make access to paper licensing records available on request and free of charge.

## 7. Applying for a licence

- Under the current law, a pub/off-trade licence application will be declined unless the court is satisfied that the provision of licences of the type being applied for is 'inadequate' in the 'vicinity' of the proposed premises, however, there is no clear definition of 'adequacy' in the legislation, and no fixed method for defining 'vicinity'.
- Existing pubs and off-licences can object to new licence applications on the grounds that there is already adequate provision, thereby inhibiting competition. These objections are sometimes withdrawn following payment to the objector by the applicant.
- The pool of stakeholders who can currently object to licence applications does not include some key agencies and authorities.
- The systems for applying for a licence, making premises variations or obtaining an occasional licence, are unnecessarily bureaucratic and expensive, and are not clearly explained in publicly available guidance. This creates additional barriers and expense for businesses.
- There is little transparency around what licences are available for sale or at what price, making it difficult, especially for new entrants, to ascertain what constitutes a fair price.
- Community members report struggling to find out about licence applications, or how they might effectively raise relevant concerns or object.

### Decision criteria for licence applications

Currently, the criteria against which new applications are assessed protect against poor management, dangerous buildings and criminal activity. They also (in theory) protect over-supply of premises by requiring the licence applicant to demonstrate that there is 'inadequate' provision of licences of the type being applied for in the locality ('vicinity') of the new proposed premises. However, despite case law addressing the definition of both adequacy and vicinity, there remains no simple legal definition of either (*Lidl v Winemark*, 2008). This allows for sometimes extensive legal debate and competing expert testimony and analysis centred on these points, both of which add significantly to the expense of making a licence application.

Currently, the police, the local authority, local residents and businesses may object to licence applications, but there is no explicit role for other relevant bodies such as the fire service, child protection, public health, environmental health and so forth, as in the systems used in both England/Wales and Scotland. It is an essential feature of any licensing system that interested parties can object to applications, so long as those objections are reasonable, evidence-based and not vexatious. Unusually however in NI, existing licensed businesses may object to new applications in their vicinity on these grounds. As we detail in the report, this appears to be anti-competitive at face value. We also heard numerous reports that

incumbent businesses would often withdraw objections on payment of a financial settlement – and note that this practice has been highlighted (and described as ‘perverse’) in previous reviews. We consider this to be a serious problem which can be addressed through a relatively minor amendment to legislation.

### **Court processes**

The process of applying for a licence can take a considerable amount of time, causing some frustration. This creates additional expense and delays. As a result, licence holders wishing to sell their licence, may have to trade part-time for lengthy periods, and in some cases the arrangement for a new premises to purchase the licence falls through. Despite these onerous, costly procedures, almost all new licence applications are ultimately granted, and renewal applications are virtually always

approved. Similar concerns about lengthy, costly legal processes were raised regarding applications for permission to vary a licence (e.g. the premises layout or size).

### **Costs of running the licensing system**

The licensing system grants permission to undertake the business of selling alcohol for profit, and therefore it is reasonable that those benefiting from the award of a licence pay for the costs of administering the system. The additional costs associated with the reforms we propose here including the establishment of a Northern Ireland Licensing Authority (as above) should be covered by a system of fees and levies on licence holders. In return, licensees should have access to clear guidance, advice and support from the NILA, which would reduce the time and expense of applying for a new licence, a variation, or an occasional licence.

## **Recommendations**

- 9. Only defined ‘responsible authorities’ and community members should be permitted to object to licence applications including variations, renewals or occasional licences.**
  - a. Responsible authorities should include public sector bodies with a legitimate interest in ensuring that licensed premises do not contribute to harm including police, health officials, the local council, the fire service or other relevant state authorities.
  - b. These authorities should be informed of licence applications in good time and be given at least 21 days to make a written representation or objection to the court. Their representation or objection should be considered by the court at a hearing regardless of whether they are available to attend, though they should have the option to do so.
- 10. Incumbent businesses, whether on- or off-trade retailers, distributors or producers, should not be allowed to object to licence applications, variations or renewals, even if they are community members.**
  - a. Should an incumbent business wish to object to new licences they should be allowed to make any concerns known to responsible authorities, but not to object directly.
- 11. The ‘adequacy’ criterion should be removed, along with any consideration of whether consumer demand is currently being met, and replaced with an area-based ‘harm’ criterion.**
  - a. This new criterion should be designed such that a licence application is declined if it can be shown by an objecting party that there is already a high level of alcohol related harms in the area being served by the premises.
- 12. The court service (in conjunction with the NILA if established) should review how all licence applications, variations and renewals are handled by courts across Northern Ireland, seeking to ensure consistency of decision-making and to minimise the time and expense involved for all parties.**
  - a. Application guidance and forms should be clear and simple enough to enable a competent person to understand the process of applying for a licence or a licence variation without specialist legal advice.



## Recommendations

12.
  - b. Applicants should be permitted to represent themselves, should they wish to do so.
  - c. Matters such as fitness to trade, premises suitability, and relevant permissions should routinely be dealt with administratively in writing when considering a licence application, variation, or renewal, and confirmed as being in order in advance of any court hearing.
  - d. Applications for occasional licences (Recommendations 21–26), minor variations, or renewals should generally be granted administratively, without a court hearing, if no party makes an objection.
  - e. In the case of applications going to a court hearing, all parties should normally be expected to be ready to make their arguments at the first hearing, and courts should generally seek to make a final decision after one hearing, avoiding adjournments as much as possible.
  - f. Written judgements on all licensing decisions should be available to the public.

13. **The administration of the licensing system (including NILA, if established) should be self-funding via at no extra cost to taxpayers.**

Funding to cover costs could be achieved by, for example:

- a. Modest annual licence fees for all licence holders.
- b. More substantial one-off licence application fees for premises acquiring a licence through the Cultural Venues pool (see Recommendation 18).
- c. A levy on cost of licences purchased through the surrender system, ideally with the percentage levy rising in bands based on purchase price.

## 8. The Surrender Principle

### Licence movements under the surrender principle

Our analysis of >1,700 paper licensing records found clear trends associated with the operation of the surrender principle.

- Most surrendered licences move from pubs to off-licences.
- Many more pubs surrender their licences than off-sales outlets.
- Pub licences are surrendered from a range of locations, including cities, towns and rural areas. Two-thirds of these are surrendered to off-licences in small towns or rural locations.
- A small but significant number of licences (almost all of which are pubs) expire completely due to non-renewal creating a pool of licences that could be used without increasing overall numbers. As a result, the total number of licences subject to surrender has fallen in absolute terms, and relative to the population, over time.

- However, if we include the increasing number of restaurants and other licence types not subject to surrender, the total number of licensed premises has remained steady in absolute terms over recent years.

### Licences confirmed as surrendered 2014–24

Type of licence surrendered	Total number of licences surrendered	Surrendered to an off-licence	Surrendered to a pub	Surrendered to unknown premises
Pub (incl. bars)	132	100	23	9
Off-licence	43	38	2	3

## Stakeholder views regarding the surrender principle

Stakeholders held a variety of views about the surrender principle, with a particularly stark divergence between incumbent businesses and potential competitors. The key arguments are summarised in this graphic and set out at length in the full report.

### Views supportive of retaining the surrender principle (SP), primarily expressed by incumbent licence holders.

- Abolition would lead to a loss of market value for the licence, which was currently treated as an asset for financial planning, loan acquisition and so forth.
- The SP protects businesses from facing excessive competition.
- The SP prevents a potential 'race to the bottom' in terms of preventing low quality operators from entering the market.

### Views supportive of abolishing the surrender principle (SP), expressed by competitors (producers and music promoters) and in several community focus groups.

- The SP creates significant costs and therefore barriers to entry for those seeking to open new businesses.
- The SP reduces diversity and innovation in both venue types and products made available (see diversity section below).
- The SP provides unfair protection against competition for incumbent businesses.

Health specialists, treatment providers and police were concerned about the risks of significantly increasing the availability of alcohol, given potential harms at both a population and individual level. Our analyses show that the increase in off-licence premises under the surrender principle system is likely to be associated with poorer health outcomes. There was no consensus on whether the surrender principle in its current form was the only, or best, way to prevent oversupply.

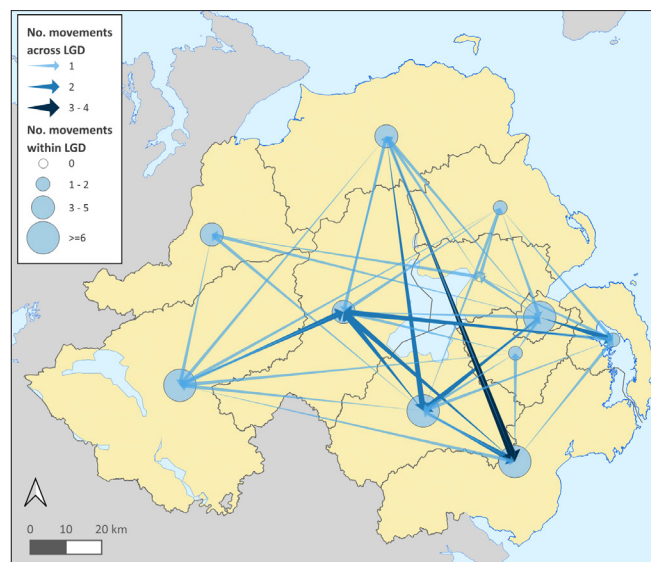
## Other consequences of the surrender principle

In practice, the surrender principle has other consequences. A liquor licence is a permission to trade, granted to a business on behalf of the community. However, because surrendered licences

are needed to open a new pub and off-trade outlet, those licences are bought and sold privately, usually through specialist estate agents. We were given a range of estimates for the current going price of a licence, most commonly in the region of £70,000–£120,000. The lack of a public register of prices paid means it is not possible to know if reported or offered rates represent fair market value or are artificially inflated. Nevertheless, the cost of acquiring a licence creates a significant barrier to entry for new operators, making it very difficult for new start-ups to test the market on a small scale with innovative offers. At the same time, the assumed value of licences is viewed by many incumbents as key to either their current or future financial stability.

There are very many well-run, popular and attractive pubs in Northern Ireland, but also a large number that are struggling and closing down. This decline is primarily due to a lack of commercial viability and changing consumption trends, which mirror patterns elsewhere.

## Movement of pub licences surrendered to off-licences 2014-24 by Local Government District (LGD)



Some communities have more premises than demand can reasonably support with many pubs trading only 2 or 3 nights per week as a result. Some pubs may only remain open due to the legal requirement for a licence to be operating ('subsisting') in order to be sold.

### **Conclusions regarding the surrender principle**

Overall, our analysis and observations point to a system that has the benefit of protecting the interests of existing pub licence holders and maintaining a limit on the total number of pubs and off-licences

combined. However, it is doing little to protect or invigorate the pub sector as a whole, and it is associated with a continuing drift of licences from pubs to shops. Such a shift is also associated with poorer health outcomes. In the face of declining pub numbers, there is a choice between continuing to protect remaining incumbent pub licensees in order to slow the ongoing decline or intervening to stimulate innovation in the on-trade sector, while preventing further increases in off-sales availability.

**We recommend that the surrender principle is substantially reformed and we propose two options for this: one limited, and a second more comprehensive.**

- The limited option would be to retain the surrender principle but legislate to prevent pub licences from being surrendered (sold) to off-licence premises (see recommendations 14–17), while continuing to allow off-sales licences to be surrendered to premises of either category.
- The more comprehensive proposal is for wholesale replacement of the current system, including the surrender principle, with a new licensing regime that caps outlet numbers of different types relative to the population (see Section 11 for outline of recommended features of a new system).

It is not possible to robustly quantify the precise business impact of abolishing or reforming the surrender principle, whether positive or negative, because there is no directly comparable system, but we discuss options for mitigating potential negative impacts below. We do not believe this constitutes a reason not to act either to reform, or replace the system, in the context of wider social, health and economic considerations.

### **Addressing consequences of reforming the surrender principle**

We recognise that current licence holders are justifiably concerned about reforms that would reduce the value of an asset that carries a considerable expected value. These include both large businesses holding multiple licences worth a considerable amount, and individual licensees whose financial security may rest significantly on the value their licence is assumed to carry. Because of scarcity value, reducing the number of pub licences available for off-sales would likely increase the value of existing off-sales licences, which would seem unfair. There is no easy solution to this problem but we suggest a series of mitigations. Firstly, a buy-back scheme to allow pub operators who wish

to leave the market to do so within a fixed time limit without losing the full value of their licence (Recommendation 15). Secondly, we recommend a cap on the resale price of off-licences in future to ensure holders of such licences do not unfairly benefit from the changes (Recommendation 16).

Reductions in the value of pub licences may also be offset by lower barriers to entry through reforms we suggest elsewhere (e.g. Recommendations 2, 10 and 12), while increases in the value of off-licences could be mitigated by levies to help fund a more accessible and streamlined system for all licensees (Recommendation 13c).

## Recommendations

**14.** Steps should be taken to prevent further replacement of pubs with off-licences, either by the following reform or through the introduction of a new licensing system as outlined in Section 11 below.

- a. Amend legislation so that 5(1)(a) licences can only be surrendered to 5(1)(a) licences, and clarify that 5(1)(b) licences can be surrendered to either 5(1)(a) or 5(1)(b).
- b. Ensure that any newly purchased 5(1)(a) licences must only be used primarily as pubs (for example, with a cap on the proportion of alcohol sales which can be used for off-premises consumption). This would not affect existing pubs with substantial off-sales business.

**15.** To mitigate potential inequities or other negative effects of Recommendation 14 on incumbent pub licence holders, consider introduction of a time-limited buy-back scheme for 5(1)(a) licences.

This would require:

- a. A robust estimation of the current market value of licences based on a comprehensive review of recent prices and trends.
- b. Establishment of a buy-back scheme under which, for a fixed time period, existing 5(1)(a) licence holders have the option of surrendering their licence to the DfC (or NILA, if established) in exchange for payment at the determined market value. The price should be the same for all, and informed by the assessment of licence value and any cap on total public funding made available for this purpose.
- c. All buy-back licences should enter a pool of available licences, which can be re-issued as non-resaleable licences of the same type.
- d. Businesses that sell their licence back should be disbarred from applying for new licences for a fixed period.

**16.** Place a cap on the value at which licences can be sold following reform to avoid inflation of off-licence prices.

**17.** As a minimum (should more substantial reforms not be taken forward, or in the interim period ahead of such reforms) the following requirements concerning sale of licences should be introduced:

- a. All 5 (1)(a) and 5(1)(b) licences available for sale not as part of a going concern should be listed on a single, publicly accessible website, with an indicative price range and contact details for the licence holder or their representative (estate agent/lawyer). This would not preclude advertisement elsewhere.
- b. Option to purchase agreements only to be entered into for an available licence if that licence has been advertised for a fixed minimum period immediately prior to the agreement.
- c. Prices paid for surrendered 5(1)(a) and 5(1)(b) licences should be recorded on the licence and a publicly accessible online register.

## 9. Impacts on diversity and innovation

The current licensing system creates barriers to diversification and innovation in terms of both the range of alcoholic products available to consumers, and the types of venues licensed to retail alcohol for consumption on the premises.

- The retail market for beer is dominated by a small number of non-NI based producers who often establish restrictive supply agreements.
- The latent demand for craft beers and ciders cannot be tested while high barriers to market access remain in place.
- There is a relative lack of nightclubs; licensed music, performance and cultural venues; and smaller niche venues across NI, which is exacerbated by high barriers to entry.

As outlined above, multiple barriers to entry for new venues stifle diversity and innovation. These include (1) significant costs associated with the need to purchase a surrendered licence on the market for new pubs/off-licences; (2) a bureaucratic, slow and often opaque system for acquiring a licence that creates additional costs, both legal and administrative; (3) additional costs and delays incurred if neighbouring premises object to an application, including possible payment for objections to be withdrawn. Here we set out how these factors and the overall system impact on the diversity of product range and venue types in NI.

### Diversity of product range

There have been long-running debates over the challenges facing independent producers in NI, and beer sales are dominated by a small number of multinational producers based outside of NI. It remains unclear whether the small market for craft beer is due to untapped latent demand or to a taste profile that is distinctive to NI consumers. This cannot currently be tested because of market barriers.

We recognise that there are persistent deep divisions on the issue of producer's licences, however, it would appear from both the numbers of licences taken out and the views expressed by our participants that while the producer's licence has some value for distillers, it has made little impact on the ability of local brewers to overcome

the challenges in getting their products to market. We note that governments in Great Britain have historically intervened to support access and increase consumer choice in various ways.

### Diversity of venue type

Compared to many parts of Great Britain there is a relative lack of diversity in terms of venue types across NI, such as nightclubs, music venues, cocktail bars and micropubs. This is not only because of the licensing system. However, it appears to be exacerbated by the fact that the current licensing system creates multiple barriers to new operators above and beyond those faced in comparable places in Great Britain. There are also limited opportunities for the kinds of sector innovation that have been seen elsewhere.

To address this, we propose a system by which expired licences are awarded to new premises which meet specific consumer needs or add to the diversity of premises. This would help to improve diversity without adding significantly to the total number of licensed premises. It therefore allows for new entrants but without increasing the overall availability of alcohol or resulting in a 'free for all' in terms of access to licences. The relative change in on-trade outlets that would result is likely, based on our modelling, to have negligible impacts on alcohol-related harms.

See also Recommendations 21 and 22 below regarding diversifying access to occasional licences.

## Recommendations

- 18. Establish a system to award non-sellable, non-transferable 'Cultural Venue' licences should be created, prioritising businesses that would increase the diversity of venue types and/or promote cultural activities.**

We propose the following mechanisms for achieving this:

- a. Establish a Northern Ireland Licensing Authority (NILA), as outlined in Recommendation 2 above, to administer the system with powers to grant in-principle Cultural Venue licences.
  - b. Create a pool of available licences equivalent to the number of licences known to have expired since 2012. This will establish the upper limit of such licences to be awarded. Any 5(1)(a) or 5(1)(b) licences that subsequently expire should be added to the pool.
  - c. Establish a tendering process for the acquisition of these licences which prioritises applications from:
    - i. new entrants, small to medium enterprises, and start-ups;
    - ii. independent, local owners with local suppliers;
    - iii. applicants whose operating plan clearly offers increased diversification in terms of stock, style, activities, size of premises etc.;
    - iv. applications offering artistic and cultural benefits to the wider community.
  - d. Check and approve the fitness of the applicant to hold the proposed licence as part of this application stage.
  - e. Grant successful tenderers an in-principle licence which would allow them to apply for a full licence at the relevant local court. The court should only assess the application on the remaining relevant criteria of permissions, safety (see Recommendation 12) – and harm (Recommendation 10) and licensing objectives (Recommendation 1) if introduced.
  - f. Enable the NILA to set conditions on licences approved, which are to be followed on final approval.
  - g. Empower the court to award permission to trade outside of current fixed opening times to specific premises holding these licences, where a compelling case is made.
  - h. If a business closes, the licence must return to the NILA for reissue using the same process above.
- 19. Revise the provisions of the producer's licence to allow longer opening hours over more days per year.**
- a. Any revisions to operating hours should ensure such outlets do not act in all other respects as pubs.
  - b. The Department for Communities (or NILA, if established) should retain the ability to monitor outcomes and introduce restrictions should concerns arise about overall numbers of such licences or any associated harms.
- 20. Greater diversity of supply, specifically independent and locally-produced products, should be encouraged in on-trade venues.**
- We propose the following mechanisms for achieving this:
- a. Introducing new regulations to require pubs over a fixed size to provide a guest beer tap serving products produced in Northern Ireland from independently-owned Northern Ireland-based producers brewing below a set capacity.
  - b. Introducing measures to prevent large producers from using supply agreements to block the sale of locally-produced products in pubs.

## 10. Occasional licences

- The system for obtaining an occasional licence in Northern Ireland is seen by many as unfit for purpose.
- The purpose of occasional licences in Northern Ireland is currently narrow, and demand for occasional licences goes beyond what is currently permitted under the law.

### Alternative systems for occasional licences

Occasional licences allow charities or other businesses to sell alcohol for a defined, limited period – and usually for charitable, fundraising or other social purposes, but the occasional licence applying to such events can only be taken out by an existing licence holder. However, we heard from many participants that the system is not working well. It is prone to abuse and there is a lack of consistency in how applications are handled and approved.

Police reported often not being given sufficient notice to properly fulfil their role. At the same time, the system is restrictive compared to England, Wales and Scotland where charitable organisations, social enterprises and small businesses can apply for similar licences directly, rather than via an existing licensed outlet.

Occasional licences should not be used to circumvent existing licensing legislation such as by allowing an otherwise unlicensed venue to open regularly over a whole summer; or a licensed venue to routinely extend its licensed operating hours or operating area at weekends. In these cases, premises should have to apply for a licence or to vary their licence through the premises licensing system and not be permitted to utilise occasional licences.

### Recommendations

- 21. Expand eligibility for occasional licences to individuals who do not currently have a premises licence, but who meet the existing criterion of being a representative of “any body established for social, charitable or benevolent purposes or for furthering the common interests of persons associated with any trade, profession, educational or cultural activity, game or sport.”**
  - a. The application must relate to an event taking place in connection with the activities of the eligible body, and alcohol must be ancillary to the main activity.
  - b. Later opening hours may be permitted where appropriate to the entertainment being provided, where the court sees fit, if there is no objection by responsible authorities (Recommendation 9).
  - c. This reform should only be introduced in the context of a clear system for objectives (as per Recommendation 1). Award of licences should be subject to an area-based harm criterion (Recommendation 11) and reform of the system of objections (Recommendations 9 and 10).
- 22. Holders of a producer’s licence should be able to apply independently for a limited number of occasional licences for events where only locally-produced products are supplied (such as small beer, cider or spirits festivals).**
- 23. Reform the timeline for occasional licence applications.**
  - a. Applications should be submitted by a set period in advance of events (e.g. at least 4 weeks), without exception.
  - b. All responsible authorities should be notified of occasional licence applications as soon as possible and given a minimum period of 14 days, again without exception, during which they may make a representation or objection to the court.

## Recommendations

24. Reduce the number and duration of occasional licences which can be applied for by a single applicant and establish a legal principle that occasional licences cannot be used to circumvent premises licensing by creating an extended increase in the availability of alcohol in a given area or premises.
25. The process for applying for and granting an occasional licence should be simplified to enable most applicants to apply themselves and should (subject to Recommendation 23 being put in place) generally be dealt with administratively, without a court hearing or specialist input, unless objections are raised.
  - a. Guidance should be made available to enable this as per Recommendation 12.
26. Standard conditions that apply to all occasional licences should be developed as well as a Northern Ireland-wide set of optional conditions which courts could apply as they see fit and/or at the behest of responsible authorities.

## 11. Outline framework for a new licensing system for Northern Ireland

Many of the challenges we identify could be resolved through an entirely new licensing system. However, we recognise this would require sustained political and community engagement, which may not be practical at this time. Nevertheless, we present a framework below that could underpin an alternative regime. Many of the elements are also included in our recommendations above, but with the substantial difference that this proposal includes the complete abolition of the surrender principle, and its replacement with a different system for limiting availability.

A further advantage of a new system would be to address the inefficiency created by having both separate entertainment and liquor licensing systems. In England/Wales and Scotland, these are merged. This better reflects the fact that in a very large number of businesses the sale of alcohol and the provision of entertainment go hand in hand.

In the interests of brevity, we do not reiterate the detail of our earlier recommendations here, however, to fully understand the different elements below, we include reference to the most similar recommendation made earlier as 'R1', 'R2' etc.

## Recommendations

- a. Establish new objectives for the new licensing system (R1).
- b. Establish a Northern Ireland Licensing Authority to oversee the operation of the system (with the same broad functions as outlined above in R2); establish caps on premises numbers (Section 5.1 in full report); and administer initial applications ahead of final decisions to be made by local authorities (either the courts or local councils).
- c. Replace the surrender principle with a per population cap on licensed outlets by type.
- d. Carry out a detailed review of the systems described in Section 5.1 of the full report in order to adopt a model of per capita limit or 'cap' that is responsive to changes in population numbers, and better able to regulate numbers of outlets by type.
- e. Introduce a time-limited buy-back scheme under which all licence holders can sell their subsisting licence to the NILA at a price determined by a careful estimation of true value (R15).
- f. After this period all remaining licences would no longer be permitted to be sold.



## Recommendations

- g. Abolish the concept of 'adequacy' as based on a prior estimation of consumer demand. Instead, establish per capita 'caps' on the basis of harm prevention (R11).
- h. Licences sold to the NILA under the buy-back scheme should enter a 'pool' of licences available for reissue using an application system (e.g. R18), subject to any cap. Businesses that sell their licence back should be disbarred from applying for new licences for a fixed period.
- i. Decisions on applications for a licence from the pool and grounds for objection should be guided by the licensing objectives. Potentially competing businesses or their representatives should not be allowed to object to a licence application (R10).
- j. Additional licences should be issued via the pool, on successful application, if needed to reach the maximum per population cap on the number of licences in each category. This should be assessed annually, based on full and independently-reviewed impact assessment, including consideration of health and social outcomes. If the population falls, the number of expired licences that enter the pool for re-issue should be adjusted accordingly to reduce the number of premises in line with the caps.
- k. As a minimum, separate caps should be established for on- and off-trade licences to reflect the different risks and benefits of the two types of retail (R14). Caps for different types of on-trade licences could be considered if this would promote the licensing objectives (R1). The caps on the number of licences to be permitted under a new system should be determined on the basis of the licensing objectives.
- l. To prevent further increases in alcohol-related harms in Northern Ireland, the overall number of off-licences per capita should not be substantially higher than is currently the case. To reflect the past loss of licences to expiration and to support innovation and diversity while protecting against harms, on-licence numbers could be increased by a small amount without significant harm. (See section 5.3, 6.3, 6.7, 6.8, in the full report and R14, R18).
- m. Secondary sale of licences issued under this system should not be permitted. Licences should be attached to premises and transfers permitted only to a new owner of the premises. When the sale of alcohol ceases to be carried on from a licensed premises, that licence should expire and the licence should return to the pool, for re-issue if appropriate as per (j) above.
- n. Merge liquor and entertainment licences such that the liquor licensing system considers all of the issues currently covered by entertainment licensing (but retain entertainment licences for premises not selling alcohol, and do not subject these to a cap).
- o. Make the inclusion of conditions on pub and off-sales licences a standard requirement and consider the creation of mandatory conditions covering key issues, for example, promotions and price offers.

## Acknowledgements

This project was commissioned and funded by the Department for Communities, Northern Ireland. The review was conducted independently of the Department for Communities and the views expressed herein are those of the authors only. The review team would like to thank all stakeholders who took part in interviews or met with the project team, premises owners, managers and staff who welcomed us to their establishments, community members who took part in focus groups, international experts who provided advice, and independently peer-reviewed the final report, Professor Diarmuid O'Donovan, and all colleagues who contributed in any way to the conduct of the review.

## Citation

Nicholls J., Fitzgerald N., Maclean, J., Valiente, R., Cook, M., Shortt, N., Burton, R., Wilson, L., Morris, D., Clemens, T., Angus, C., Pearce, J., Angus, K. and Holmes, J. (2024). Independent Review of the Liquor Licensing System in Northern Ireland including the Surrender Principle: Executive Summary. Stirling: University of Stirling.

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