



Northern Ireland
Assembly

**COMMITTEE FOR
SOCIAL DEVELOPMENT**

**OFFICIAL REPORT
(Hansard)**

**Licensing and Registration of Clubs
(Amendment) Bill: Evidence Session with
the Police Service of Northern Ireland**

30 September 2010

NORTHERN IRELAND ASSEMBLY

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SOCIAL DEVELOPMENT**

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Members present for all or part of the proceedings:

Mr Simon Hamilton (Chairperson)
Ms Carál Ní Chuilín (Deputy Chairperson)
Mr Sydney Anderson
Mr Billy Armstrong
Mrs Mary Bradley
Mr Mickey Brady
Mr Jonathan Craig
Mr Alex Easton
Ms Anna Lo
Mr Fra McCann

Witnesses:

Inspector Gary Atkinson)
Mr John Conner) Police Service of Northern Ireland
Superintendent Chris Noble)

The Chairperson (Mr Hamilton):

Joining us today are Superintendent Chris Noble, operations manager for B district, which is south and east Belfast; John Conner, head of the social policy unit, strategic partnerships, criminal justice department; and Inspector Gary Atkinson from social policy unit, strategic partnerships, criminal justice department.

You are all very welcome; and apologies for the delay in getting to this session. We have been talking about drinks; and it has been like a session this morning. I remind everyone that the meeting is being reported by Hansard. Please begin with a brief introduction, after which we will open up the meeting for questions.

Mr John Conner (Police Service of Northern Ireland):

I am John Conner, and I am from the social policy unit in the criminal justice department.

Superintendent Chris Noble (Police Service of Northern Ireland):

I am Superintendent Chris Noble, the deputy district commander for south and east Belfast and, indeed, central Belfast.

Inspector Gary Atkinson (Police Service of Northern Ireland):

I am Inspector Gary Atkinson, from the social policy, strategic partnerships and criminal justice department.

Superintendent Noble:

Thank you for your welcome, Chairperson. We will try to give you a blend of information today. I come from an operational background. Professionally, I have been involved in the night-time economy for a large part of my life, so I can bring you the central Belfast perspective, which will, in turn, reflect that in the rest of the Province. For their sines, and on a daily basis, John and Gary are embedded in policy matters, so they will be able to give you an organisational perspective on policy issues.

For the purposes of time and to maintain the flow of the debate, if members are content, I shall reinforce the key points in our submission. I shall start with the closure provisions. In some ways, that is an unfortunate term. For me, it should read “public safety provisions”, which would reflect more accurately where we see the benefit. With respect to the grounds on which a senior police officer, which is defined as inspector or above, can close specified licensed premises, we have significant concerns about the absence of two grounds that were in previous drafts of the Bill. In September 2008, when we were consulted on and supported fully the draft legislation, the specified grounds for closure included imminent disorder and noise nuisance, as well actual disorder, which has been retained.

Before I talk about the reasons why we feel that all three grounds should be present in the Bill, I will put our concerns in context. First, the vast majority of licensed premises are responsible and cause the police no difficulties or very few difficulties. For example, there are 411 licensed premises in Belfast, and, at the moment, we have a challenging engagement with just eight of them. Indeed, there is a sliding scale of issues, so it would be unfair to paint the situation as a broad issue involving all licensed premises. It is clearly not. Secondly, we see the role of such powers, particularly the three grounds for closure, not from a punitive perspective but from a public safety and preventative perspective. I shall touch on that subject in a moment.

Our first concern about the absence of all three grounds is that waiting for disorder to take place is akin to closing the proverbial stable door. If, as an inspector, I am dealing with disorder at a pub, which can quickly move to violence, my first concerns are to protect the victims, stop further offences from taking place, and arrest perpetrators, as opposed to finding the licensee in order to engage in a discussion about closing the premises. That involves considerable amounts of police time and risk, not only at the scene but subsequently, further down the criminal justice process. If disorder cannot be dealt with at an early stage or, preferably, prevented, there are costs to the courts, the prisons and the probation service.

Secondly, the Bill, as it stands, will place us in a weaker position than comparable jurisdictions. My understanding is that the Licensing Act 2003 and the Intoxicating Liquor Act 2003 provide safeguards, powers and options beyond those that we currently have here. From my perspective, it could be argued that I am tying one arm behind the police's back, but we could also be creating a less safe environment than would otherwise be the case. Again, for me, it comes down to public safety.

Thirdly, and this connects with my view that the vast majority of licensed premises and licensees are responsible: on a daily basis, we work consistently and well with the trade and its representatives. The common refrain from them, and one of their biggest concerns, which, because I do not have statistics, is anecdotal, is that rogue elements in the trade abuse the system and are able to operate outside the rules, thereby putting the legitimate trade at a commercial disadvantage. I do not believe that any law-abiding licensee would have anything to fear from the inclusion in the legislation of the two additional grounds for closure.

The guidelines will be critical to ensuring that there is good law and a common sense

application of it. My understanding is that the guidelines in England and Wales refer to a collaborative effort. Rather than resorting to the exercise of legal powers, the first thing that a police officer should do is to express concerns to the licensee. In fact, on many occasions, the licensee will have contacted the police to ask for a discussion about the matter. It is not an adversarial but a collaborative process. Indeed, on some occasions, licensees voluntarily close their premises.

My understanding of closure of premises does not automatically mean closure for 24 hours; it could mean for a period of time. In fact, it may affect only the licensed part of the premises. Therefore, the measure is not a draconian 24-hour closure with no discussion with the licensee. The approach is very much a collaborative attempt to try to keep people safe and to maintain the integrity of the business in question. A business where a serious assault, or, God forbid, worse, has taken place in or around the premises has various challenges with its brand and reputation just as much as a business that has been closed.

I assure members that, as a matter of course, police officers do not seek out additional paperwork or attendance at courts. An element of necessity will be involved, not just because human rights legislation obliges us to have it but because it is one of the practicalities of policing. We much prefer to prevent crime than to have to deal with its consequences.

In summary, the grounds that are absent for me are to do with dealing with imminent disorder and noise nuisance, and those cover some of the key elements of tackling alcohol-related disorder. The issue with imminent disorder is the fact that police officers with genuine powers and sanctions can effectively influence and work with licensees to tackle disorder before it turns into violence.

With noise nuisance, I believe that we can address the quality-of-life issues and complaints that we receive from a lot of people who live around licensed premises or who are impacted significantly by having such premises in their area.

We are very supportive of penalty points. I believe that they are more effective in acting as a deterrent and as a form of enforcement than the current system. I support the clause on the accounts of registered clubs, because it would mean a drop in bureaucracy for police officers. You will see in our submission that we have some concerns with proof of age schemes and the efficacy of particular forms of identification under the proof of age standards scheme (PASS).

If I may talk about authorisations for special occasions, I will probably just alter slightly the perception of the police view on this that came out earlier. An increase in the number of special occasions that may be available does not necessarily equate with x amount more violence per se. However, it is probably fair to say that the more alcohol that is consumed, the greater the increase in some of the risk factors. Allied to the fact that we do not believe that the proper span of powers would be available to us, the risk to public safety would exponentially increase if people had more opportunities to drink. However, we would not be against an increase in the number of special occasions per se. The issue is just about having the proper controls to manage them.

Inspector Atkinson:

We anticipate that if any clubs were to use the increase in the special occasion authorisation for clubs on Thursday, Friday or Saturday night, our resources would be stretched, because they are being reduced across all organisations. Obviously, we are dealing with licensed premises, and our having reduced closure powers to deal with that situation would link into our having to deal with the clubs at the weekends.

The Chairperson:

Your argument about the closure provision if there is imminent disorder is persuasive. I can understand that it is incredibly difficult for you operationally to go into a scene where actual violence is occurring. It makes closure, which is the whole purpose of the provision, that bit more difficult. However, imminent disorder creates a level of what was described earlier as subjectivity. That can be a fine line. In most cases, dealing with that involves appropriate care and attention, but there could be occasions when the provision could be used inappropriately. It may even bring about an escalation in the situation, which is what you wanted to avoid in the first instance. How do you see that working out if the Committee were minded to support an amendment to include imminent disorder? I think there is a persuasive case to examine it very carefully, but how do you argue against the point about subjectivity and the provision's being abused? I would not say that I have seen it abused, but I have seen circumstances in which I would be concerned if certain circumstances were replicated. I have seen that in the past, and others have expressed a similar view.

Superintendent Noble:

I will ask my colleagues to respond in a moment. However, I share those concerns, in the sense

that police officers have a range of powers that covers dealing with criminals and enforcing road traffic legislation. Discretion and subjective professional judgement are required all the time in the use of those powers.

The inspectors will be the people who exercise the power. To give you a flavour of what they do at any point in time, they run neighbourhood and public protection units in which they have to manage sex offenders, domestic abusers and investigate child abuse, and they run our public order units. Therefore, they are professionals with a huge amount of power. At times, through case law and statute, that power turns on concepts such as reasonableness. By their very nature, such concepts are subjective until they are interpreted by the courts. Therefore, there is an issue about the level at which the measure is pitched. For example, we have to consider whether it is being pitched at an appropriate level in the investigation process, alongside some of the quite grave issues that inspectors have to deal with.

For me, the devil is in the detail of the guidelines. I can guarantee that police inspectors will take significant cognisance of the detail of a guideline, because they know about the triple lock involving their organisation's guidelines, the Department's guidelines and scrutiny by the court. All that will put them under significant pressure to justify what they have done. Therefore, this will not be taken lightly.

Mr Conner:

As we outlined in our written submission, sufficiently robust control measures are in place to ensure that police actions are necessary, proportionate and justified. Chris spoke about inspectors, and action that resulted in closure would be only a last resort. In addition, police officers would have to go to court to justify the action taken. The Department of Justice will also be issuing guidelines on how the police have to use the powers. Therefore, we feel that sufficiently robust measures are in place to satisfy those conditions.

Inspector Atkinson:

I have researched the guidelines in detail with the Home Office alcohol strategy unit. There are very robust guidelines for our colleagues in England and Wales, and ours broadly reflect those and those of the Department of Justice.

It is not just a matter of filling in the form; officers have to meet detailed guidance and criteria

before a premises is closed. As Superintendent Noble outlined, most licensed premises in England want to co-operate with police and show that they are responsible, because any closure power automatically generates a review of their licence, as well as a court appearance. That does not happen here. Therefore, I cannot see use of the power requiring just a form to be filled in; its use will have to be justified in detail to the court.

Mr F McCann:

Of the 411 premises in Belfast, eight are causing a problem. How many of those eight are registered clubs?

Superintendent Noble:

I am focusing primarily on licensed premises, not registered clubs.

Mr F McCann:

You are putting the case that, with the increase in licences, there may be problems with registered clubs. However, in Belfast, there are 411 premises, including registered clubs, and eight of those premises are causing problems. If there are no registered clubs among those eight premises, the clubs must be well run and have very little violence occurring or few problems emanating from them.

Superintendent Noble:

Yes, although sometimes they are clever enough not to come to our attention. However, you cannot prove what does not exist. Generally, we do not have the same issues with registered clubs that we do with the classic night-time economy licensed premises. That is a fair point.

Mr F McCann:

You may have heard me ask the departmental officials about this, but what you were saying does not always reflect reality, and I know that that is the case in my constituency. The heavy-handed attitude of the police towards some of the pubs in my constituency is probably down to a few individuals. People in the constituency have raised that issue on a number of occasions. A common sense approach from the police, involving mediation and their not going into pubs at certain times, especially when they know that people are going to be overloaded with drink, could settle a situation far quicker than if they were to walk in and say that they were closing the premises. That in itself could lead to trouble. If the onus is put on the owner of the bar or

premises, or, if they are not available, whoever is there on the night, such as a sensible person in control, in 99% of the cases, you could mediate a position in which the bars are emptied and any trouble is taken away.

Superintendent Noble:

The difficulty is that I assume that we cannot implement the provision on a regional or a case-by-case basis. We need to provide safeguards across the North and across the Province. There are obviously community contacts that have an influence on the community's concerns about police action and decision-making. My focus is not anti-business at all. I do not believe that what we are proposing will actually have to be implemented all that regularly. I think that the deterrent effect will be huge, and that, if anything, it will arguably bring more prosperity to the trade in the sense that there will be a level playing field and absolute clarity and certainty about what will happen if people step out of line.

There is perhaps a distinction to be made between licensed premises in urban and rural environments, but the safeguards will be in place across the board. For me, the primary focus has to be on keeping people safe, and we know the huge impact of alcohol on people's safety, not just in the public realm but in the domestic realm.

Mr Conner:

To add to what Chris is saying, a constable or a sergeant does not close a place; an inspector does that. Chris has outlined the powers that they already have. Only someone at the grade of inspector or above can actually decide to close premises.

Mr F McCann:

If we look again at the reality of any given situation, the inspector will react to what the sergeant or the individual policeman has told him. As I said, I have had some experiences of that. I have to go back to the figures; there are 411 licensed premises, and only eight of them are causing problems. I take it that most of the premises involved are based in the city centre.

Superintendent Noble:

The city centre now has a fairly broad footprint that stretches all the way up the Lisburn Road and out towards the Odyssey Complex, so it is quite extensive. My concern is that, if, at some point in the future, police actions are found to be lacking, the proposed power could have been a key

tool. We may not see the need for it now, but a lot of issues relating to licensed premises are foreseeable for us. If police have to wait until there is actual disorder to have what, on occasions, will be an effective sanction not just for those licensed premises, the potential to increase the risk for the night-time economy is created in circumstances where we have seen real progress being made over the past few years.

Ms Lo:

Is there not already a law dealing with public disorder, enabling you to close premises?

Superintendent Noble:

Under common law, if there is a breach of the peace, for example, we can take pre-emptive actions. However, that primarily involves arresting an individual or moving an individual from A to B to try to prevent a breach of the peace. There is nothing comparable to the proposed legislation.

Ms Lo:

Does that mean that you are closing the premises?

Inspector Atkinson:

The Department of Justice, in consultation with us, has an existing power to close licensed premises. We make a submission and present evidence, and the Department can close the premises. However, that will be repealed if the proposed legislation goes ahead.

Ms Lo:

Will you let me know the difference between actual disorder, that is, fights and people thumping each other, and imminent disorder? How do you define that?

Superintendent Noble:

Thankfully, the guidelines will hopefully give us some steers on that. The current environment, and my perceptions of actual disorder, require the act to be in place. A blow may not necessarily have landed, but it normally has to have commenced. Therefore, we are essentially dealing with a scenario in which police have to intervene to protect somebody's life or to arrest an offender. A whole range of situations could be defined as imminent disorder.

If it helps, I will tell you how I see the powers working in Belfast city centre. Through police officers' observations or the licensee's contact with police, the police will get a sense that there is a particular crowd, particular concerns or particular individuals who have drunk a lot of alcohol. I think that licensees will pick a vibe up about that very quickly. It is often up to the door staff to try to handle such situations, and that can add another element to the mix. On occasions, police will have information that there will be disorder at particular premises.

Ms Lo:

That information could come from neighbours, the owner of the pub and so on.

Inspector Atkinson:

Perhaps I can outline what happens from an operational perspective. A few years ago, I worked throughout the city centre in the public order unit and had to attend a number of premises in which problems had upscaled to the stage at which local police could not deal with them. A level 2 public order unit had to attend a number of licensed premises — I will not name them — and, because of wide-scale disorder that went to the level of almost being a riot, it was necessary to clear those premises out. That is a situation that we do not want to get into again. If we have information from a licensee or a member of the public that disorder is about to take place, we want to be able to do something about it. That protects the police, members of the public and those who are involved in the disorder.

Superintendent Noble:

Perhaps I could briefly comment on the concept of reputation, which, I appreciate, is critical for the trade. If I were in a licensee's shoes, I would much prefer to have an agreed two-hour closure, even of only the licensed elements of the premises, to try to deal with any potential or actual disorder, than to have a public order unit wade into the middle of things. That could result in injury and, no doubt, in bad word of mouth spreading across a particular community. I fully accept licensees' and communities' concerns about how that power is going to be used. However, in 2008 and 2009, under the Licensing Act 2003, around 250,000 licences or certificates were in force, with only 54 exercises of power. Therefore, on a pro rata basis in Northern Ireland, the instances of the use of the power would easily be in single figures, if, indeed, we ever needed to exercise it.

Inspector Atkinson:

Closure orders appear to be seen as negative. However, they can be a positive thing for a licensee, because they will usually have consulted the police and will be happy for the premises to be closed rather than for disorder to take place. Again, premises would not be closed for 24 hours; that could be reduced to only five or eight hours, and it would be reopened the next day. Although a closure order generates an appearance in court, the police can report that the licensee co-operated fully to ensure public safety. We have an action plan in place that, working in partnership with licensees, ensures that disorder does not take place again. We would not, then, object to a club's late hours being reduced or revoked. Therefore, this can be a positive thing for licensees; it is not always negative.

Ms Lo:

We will be hearing from Pubs of Ulster, and perhaps we should consult with the Department of Justice on this matter.

Mr Craig:

I was interested to hear your comments on manpower levels. What would be a sensible increase in the late opening of clubs? At present, clubs can open late one day a week. However, under the proposals, that would come closer to two and a half days a week, which is, potentially, an entire weekend.

The nature of most clubs is that they are connected with sport of some description. Therefore, the biggest reason for late opening would probably be a sporting event, such as a major cup final. However, not all such events occur at weekends; a lot occur throughout the week. What implications does that have for manpower levels? I am not an expert on policing, but I certainly know how other emergency services plan their work levels, which are usually reduced during the week and then peak at weekends. Are your resources similar? Would the late opening of clubs during the week cause a major resource issue?

Superintendent Noble:

In some ways, policing and health services differ in the issues that they deal with where alcohol is concerned. Indeed, we obviously sympathise with the emergency health services. For us, the key issue is not the sheer amount of alcohol that is drunk but the compression of time in which that

happens. Therefore, giving people more opportunity to drink does not necessarily equate with more disorder. However, you are right to say that, in policing, there is no flatline when our officers are out on the ground. There will be peaks and troughs. For example, in my area, we try to have more officers on at key times of the night-time economy. If, in another district with a similar profile, clubs started opening late during the week, that would have to be monitored very carefully.

All I can say is that, if there is an issue with a particular club, it will be picked up, and police will then have to decide how to address it. However, if that issue snowballs, you are right to say that, because of the 120 late night openings, there would be significant challenges in trying to spread resources to meet demand. I can speak only from experience in my district, but perhaps my colleagues can talk more broadly. To go back to earlier comments, we do not have a significant issue with registered clubs. However, that is not to say that one will not develop.

The Chairperson:

Jonathan?

Mr Craig:

I am just fascinated by this.

Mr Armstrong:

When will you bring in penalty points for disorder? Would penalty points be for disorder inside or outside the building? What would warrant penalty points?

Mr Conner:

A range of situations is covered in the legislation.

Inspector Atkinson:

There is a list of offences, on conviction, for which penalty points would be received. DSD may wish to comment on that. For example, a licensee would get five penalty points for selling alcohol to a person under the age of 18.

Mr Armstrong:

A lot of disorder occurring outside a club would be no reason for the licensee to get penalty

points. That would create a lot of extra duties for the police.

Inspector Atkinson:

Under the intended new legislation, penalty points would be given for certain prescribed offences.

Mr Conner:

That would include, for example, selling alcohol to underage people and opening after hours.

Mr Armstrong:

Therefore, the issue is to do with the publican and not the people in the pub.

Inspector Atkinson:

It comes down to public safety. In presenting a case to the court, it would be highlighted if various people had committed a number of offences, whether they are the licensee or other people creating disorder. An ongoing police investigation would look into any offences that had taken place, whether that was public disorder, assaults or any more serious offences. Those would be dealt with as a separate matter but referred to in the initial court appearance.

Mr Armstrong:

Could it be taken into consideration that what happened in the street was to do with what happened inside the club?

Inspector Atkinson:

Yes. We could apply for the suspension of a club's licence if necessary. However, we would work with licensees, most of whom are responsible and generally happy to work with the police.

Mr Conner:

We should also see licensees focusing more on complying with the legislation. The sanction of closure for between one week and three months is a greater deterrent than a fine, the amount of which clubs can make in a night.

Mr Armstrong:

I totally agree with the penalty points system, because it is more of a deterrent, which we need. It is also easier to manage, because there would be fewer court cases, fewer problems and less time

wasted.

Inspector Atkinson:

Similar to our colleagues in DSD, we work in very close partnership with Pubs of Ulster and the Northern Ireland Hotels Federation. We have provided those organisations with reassurances that we will produce very detailed guidance on closure orders and consult them on the concerns that they have to ensure that there are safeguards for their members. We did that with the test purchase of alcohol legislation. That had a lot of positive outcomes, including our detailed policy and procedures for licensed premises.

Mr Armstrong:

I hope that penalty points would save police time and result in fewer court cases and fewer problems.

Mr S Anderson:

Chris, you referred to noise nuisance, which I took to mean high-level disco music — it would happen in the sort of place that I would attend, Chairman. Obviously, those premises will have received their entertainments licence. Therefore, do you propose to liaise with the licensing council or officer on the ground before you close any premises? Alternatively, would you ask a club to turn the decibels down and try to reach a compromise?

Superintendent Noble:

Obviously, as the word suggests, the guidelines will give operational guidance to police officers on what is appropriate. For me, the first port of call will always be to engage with the licensee, as we currently do and, indeed, as do various agencies, particularly where noise nuisance is concerned. Therefore, the approach will be very much collaborative and persuasive. The issues with closure are set well back in the options that police will consider. However, on occasions, some premises are persistent offenders with noise nuisance, and they have a significant impact on the quality of life of the residents who live around them.

Mr S Anderson:

I am sure that you realise that local authorities have difficulty in gathering information with their monitors. Do you see this as a provision for your inspector or someone more senior to step in to close a place because they believe that it contravenes the legislation? After that, how would it

work? Would you still work with the local authority?

Inspector Atkinson:

Our guidance, which will probably mirror and go beyond that in England and Wales, is very detailed. Several criteria have to be satisfied before implementing a closure order is resorted to. I emphasise that, on the mainland, issuing a closure order is an absolute last resort. It was quoted that, out of all the premises in England and Wales, 54 were closed. We anticipate that even fewer will be closed here.

Superintendent Noble:

Contrary to public opinion, we are not in this to try to stop people having fun, and we are definitely not trying to restrict trade or business in any way. The approach will be persuasive and collaborative, as opposed to having an adversarial element.

Mrs M Bradley:

I looked at the number of extra nights that could be granted for clubs. It gives me good confidence that it is the police that will have the opportunity to decide on who will get the extra nights. Surely you will be able to work with all the clubs on that. Clubs that have a record of good behaviour will not want that to be blemished if they were to have an extra night. I hope that you can work with that.

Superintendent Noble:

We will try to link the authorisation for a special occasion to the breadth of the police's powers, so that if a premises were out of order in some way, a much more effective and speedier deterrent could be used down the line. However, such premises are absolutely the minority.

Mrs M Bradley:

It is similar to pubs, in that they will want to protect their licences. I hope that that works out.

Mr F McCann:

I want to return to a question that Sydney asked. The fact that councils deal with noise offers a balance across the board, because the opinions of the police, objectors and the licensee are taken on board before a decision is made. One of the things that we have learned on the council over the years is that, if people go for an outright closure or try to take away the entertainments

licence, they often find that they lose it in court. The council has the balance in that not only does it set in place procedures to gather the evidence but it offers a mediation role that brings together each of the individuals. That works in the vast majority of cases. If there is a serious noise nuisance, it needs to be dealt with, but if the council goes to court and loses the case, its hands are tied when trying to deal with such issues in the future.

The Chairperson:

Do you want to say anything about irresponsible drink promotions, which we discussed in the previous session? I will not open it up to questions, but do you have anything that might helpfully inform us?

Superintendent Noble:

Our organisation has not had the opportunity to consult and codify a response, but we are more than happy to do that if asked. That said, we have seen the consequences of people consuming significant amounts of alcohol in a short time, and, very often, it is local residents, members of the public or, indeed, members of the Police Service who have to suffer. By definition of something's being irresponsible, we are against it. The key is defining what is irresponsible and what is responsible.

The Chairperson:

If we could do that, we would be halfway there.

Thank you very much for your useful evidence, and we are sorry for the delay.