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ARTICLE

When Systems Clash: The Case for a Single Regulatory Body for Licensing

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This article examines what happens when the same subject matter is or could be controlled by different licensing regimes. It suggests that the system of control of licensed premises would be improved by appointing a single regulatory body for licensing.

Keywords: Licensing; regulation; planning; Protect Duty

Introduction

On the whole, civil servants have not run pubs, clubs, festivals, casinos or lap dancing clubs. So, when tasked with drafting new licensing legislation, they don't approach it from the viewpoint of the operator, who might need several different consents to run their premises. These might include licences for their alcohol, entertainment, late-night refreshment, pavement usage, any gambling facilities and sexual entertainment, not to mention road closures, traffic restrictions and, of course, planning permissions that underpin everything. This could just be viewed as one of those costs to businesses, an accident of history resulting from the piecemeal way licensing legislation is rolled out in this country.

But what if the different consents speak with different tongues, making inconsistent requirements? And is it the job of a decision-maker to scour through other consents to make sure theirs conforms with the others? If so, how should they go about it? And to what extent should Parliament even try to arbitrage between different systems? And when it has tried, has it worked?

This article looks at these questions through the lens of history. However, this is no dusty treatise but a pressing modern topic. That is because Parliament is about to overlay on all systems regulating hospitality a yet further system, Martyn's Law, which will impose a new Protect Duty on operators to guard against terrorism. Draconian penalties may be imposed for breaches. But what if the retrospective requirements of the Protect Duty regulator are in conflict with the prospective requirements of the licence? As the draft bill nears its parliamentary gestation, we are still not being told.

This latest episode underlines a century-old theme. What happens when systems clash? This article answers the question and critiques the different approaches taken by legislators. It finishes with a suggestion of a better way, one that will promote consistency, save costs and reduce the sometimes Kafkaesque burdens on operators.

The basic principle

In making a decision, a licensing authority must exercise its discretion so as to further the policy and objectives of the legislation,[1] in light of the evidence and circumstances of the individual case.

This is easy to state as a point of principle. But what happens if the regulation of the operation is also covered by a separate regulatory system? Must the decision-maker ignore the existence of the other system and any decisions made under it, or is it bound to follow any determinations made under that system? In older legislation, Parliament declined to say, leaving decision-makers and, ultimately, courts to unravel the conundrum. Over the last two decades, Parliament has, on occasion, tried to instruct decision-makers on how to approach their task when a different system also regulates the operation. It has done so with only limited success.

The former approach: leave it to the regulator

In older legislation, Parliament did not purport to direct licensing authorities on how to deal with concurrent regulatory regimes. Indeed, in some cases, Parliament did not even tell authorities what to take into account under the regime they were to be administering. A notable example of this was the Licensing Act 1964, which set no licensing objectives, as a result of which the Justices' Clerks Society formulated the 'demand test', an extra-statutory brake applied by licensing

justices on the development of the industry, whereby a new licence would not be granted unless the applicant was able to show unmet demand for it.

Counter-intuitively, the absence of parliamentary guidance did not result in more cases reaching the higher courts. This might be explicable on the basis of lower rates of judicial review in general before the millennium. In 1975, there were 160, which grew to 4,500 in 1998 and 11,200 by 2011. A more likely explanation, however, is that without rules being set down by Parliament, there was less to litigate, leaving licensing authorities simply to muddle through.

A notable exception was *R v Manchester City Crown Court ex parte Dransfield Novelty Company Limited* [2001] LLR 556, in which an operator of gaming machine centres obtained planning permission on appeal, satisfying the planning inspector that its proposal would not have a materially adverse effect on the amenity and character of the adjoining shopping area. But it was less successful on its appeal against refusal of a gaming permit, with the High Court holding that there was evidence to support the Crown Court's conclusion that truanting youth might be attracted to the centre. Along the way, Glidewell J considered what impact the inspector's decision ought to have had. He stated:

> A Crown Court is entitled to reconsider, and if it thinks right, to differ from an inspector who dealt with the planning issues. However, if an inspector in a matter of this sort has specifically dealt with a particular issue, and expressed his view or conclusion on that issue, it is clear that his view or conclusion must be given great weight by the local authority, and by the Crown Court on an appeal, and there would have to be good reason for rejecting that view or conclusion.

This is probably to be treated as an *obiter dictum*, because Glidewell J went on to hold that the Crown Court had not in fact differed from the Inspector. However, it is both good law and good sense, as confirmed by Laws LJ in *Forster v Secretary of State for Communities and Local Government* [2016] EWCA Civ 609 at [24] that '... while a licensing committee is not bound to follow a planning decision-maker's conclusion, nor vice versa, each will and should have regard to the other where both make decisions in the same context'.

Of course, it cannot be an immutable rule that each must follow the other, since that would be a fetter on discretion. In any case, it is unlikely that the evidence before a planning and licensing decision-maker will be identical, and an allowance needs to be made for that. However, it operates as a principled rule of thumb.

A further example of systems pragmatically co-existing arose in *Lethem v Secretary of State* [2002] EWHC 1549, in which a planning inspector, dealing with an appeal against a refusal of permission to convert a shop into a bar, rejected the argument that the impacts could all be dealt with by licensing and so dismissed the appeal. In its further appeal, the appellant relied on a Planning Policy Guidance note that stated, 'The planning system should not be operated so as to duplicate controls which are the statutory responsibility of other bodies (including local authorities in their non-planning functions).'[2]

The High Court (George Bartlett, QC, sitting as a Deputy Judge) was not impressed. He took as his reference point the dictum of Deputy Judge Jeremy Sullivan QC in *Gateshead Metropolitan Borough Council v Secretary of State for the Environment* [1993] 3 P.L.R. 100, 110B-F, dealing with concurrent regimes for planning and pollution control:[3]

> Where two statutory controls overlap, it is not helpful, in my view, to try to define where one control ends and another begins in terms of some abstract principle. If one does so, there is a very real danger that one loses sight of the obligation to consider each case on its individual merits.

To illustrate this, Deputy Judge Sullivan weighed up cases at each end of the spectrum:

> At one extreme there will be cases where the evidence at the planning stage demonstrates that potential pollution problems have been substantially overcome, so that any reasonable person will accept that the remaining details can sensibly be left to the 1990 [Town and Country Planning] Act authorisation process.
>
> At the other extreme, there may be cases where the evidence of environmental problems is so damning at the planning stage that any reasonable person would refuse planning permission, saying, in effect, there is no point in trying to resolve these very grave problems through the 1990 Act process.

Of course, as he wisely pointed out, most cases fall between the polarities:

> Between those two extremes there will be a whole spectrum of cases disclosing pollution problems of different types and differing degrees of complexity and gravity. Reasonable people might well differ as to whether the proper course in a particular case would be to refuse planning permission, or whether it would be to grant planning permission on the basis that one could be satisfied that the problems could and would be resolved by the 1990 Act process. But that decision is for the Secretary of State to take as a matter of planning judgment, subject, of course, to challenge on normal Wednesbury principles.

Applying those principles, Deputy Judge Bartlett found no legal error in the inspector's approach and so dismissed the appeal, despite the terms of the planning guidance note.

From this, we can derive the principle that there is no bright line between planning and licensing control. Rather, the decision-maker is entitled but not bound to rely on the good sense of the decision-maker in the other system, depending on the exigencies of the individual case.

And so the situation prior to 2003 could be characterised as Parliament foregoing the opportunity to set barriers between systems, instead crediting decision-makers with common sense and the ability to listen to each other and trust each other to come to decisions in the public interest. This can be seen as a form of decentralised decision-making, trusting local emanations of the state to come to a sensible view.

Increasing parliamentary intervention

When the Licensing Act 2003 came onto the statute books, Parliament again passed up the opportunity to legislate as to how the planning and licensing systems should interact. However, the statutory guidance under Section 182 did enter the fray by stating that 'planning, building control and licensing regimes will be properly separated to avoid duplication and inefficiency', without deigning to state by whom they should be separated or, more importantly, how this was to be achieved.

And so, with this demi-intervention prevailing, the High Court in *R (Blackwood) v Birmingham Magistrates* [2006] EWHC 1800 (Admin) turned its mind to what the guidance meant in practice. The background facts were that the licensing sub-committee granted a variation of a licence that was more liberal than the prevailing planning conditions, and on their appeal, local residents argued that that was unlawful. Unsurprisingly, the High Court disagreed, but in his judgement, Kenneth Parker, QC, sitting as a Deputy Judge, made some helpful remarks as to the utility of the guidance and the interplay of the systems:

First, in relation to the bald statement in guidance that the systems will be properly separated, he noted pithily (at paragraph 58):

> It is relatively easy to state this as a target, but it is much harder to formulate any general principle that would assist in demarcating the respective competences of planning and licensing authorities.

Second, Deputy Judge Parker rehearsed what had been said on the topic in *Gateshead* and *Lethem*.

Third, however, he did try to find some element of demarcation by suggesting that, while there is considerable overlap between land use planning objectives and the licensing objectives, the planning system generally deals with the principle of use while the licensing system deals with operational matters.

In so saying, the learned Deputy Judge fell into his own trap. A planning authority might well limit hours where it considers this is necessary to enable the permission to be granted, while a licensing authority might equally decide to refuse something already granted by the planning system, for example, a late-night refreshment use next to a residential building. As has been repeatedly stated in the case law, where Parliament has not laid down a boundary, it is not for the courts to do so. Licensing authorities have to be allowed to think and act for themselves, unconstrained by judge-imposed fences.

One system: two consents

In some cases, two different authorities are given discretionary powers within the same legislative framework. A paradigm example is gambling. Under Part 5 of the Gambling Act 2005, the Gambling Commission, as a national regulator, is given the power to grant operating licences to those who wish to provide facilities for commercial gambling. Meanwhile, local licensing authorities are given the job of considering applications for premises licences under Part 8. Both types of licences are needed for hard commercial gambling, such as bingo, betting and casinos.

In *R (Greene King) v Gambling Commission* [2017] EWCA Civ 372, the claimant wanted to license its pubs as bingo facilities. The Commission refused to grant it an operating licence to do so because it considered that ambient commercial gambling in pubs was inimical to the gambling licensing objectives. Greene King appealed successfully to the First Tier Tribunal but it then lost in the Upper Tribunal before it had a final push before the Court of Appeal. Its principal argument was that the Commission licensed operators and licensing authorities licensed premises, and never the twain shall meet. In other words, the Commission was not allowed to withhold an operating licence because it disapproved of where the operation might take place. The argument failed, with the Court of Appeal finding specific and general reasons for rejection.

First, the specific reasons were (per Hickinbottom LJ at [46]:

> Whilst I accept that the Commission and local licensing authorities have discrete functions under the Act, in exercising those functions there are some common or overlapping relevant factors. Neither the Act nor the Statement of Principles expresses any principle of procedural exclusivity in favour of local licensing authorities in respect of premises. Indeed … the Commission's Licensing, Compliance and Enforcement Policy Statement … indicates that, when considering an application for an operating licence, the Commission will assess not only the

> suitability of the proposed licensee but also the proposed operating model, including 'the location and operating environment; consistency with the licensing objectives'. [Counsel for Greene King] properly accepted that, in determining an application for an operating licence, the Commission is able to consider the operating environment in which the applicant proposes to offer gambling facilities – indeed, it seems to me that it is bound to do so – hence an operating model must be (and, in this case, was in fact) provided with the application. So far as non-remote gambling facilities are concerned, premises are an inherent part of that environment. Therefore, whilst they play a different role, premises may be a relevant consideration in both an application for an operating licence, and an application for a premises licence.

Second, having addressed the framework of the specific system, the Court went on to locate its reasons in the context of a wider approach to dual regulation. Its general reasons were at [47]:

> There is nothing unusual in that. Statutory controls frequently overlap; and, where they do, a consideration which is material to one scheme (or part of a scheme) may well also be material to another. In the case of the Act with which we are concerned, Parliament has dictated that the Commission exercises its powers in respect of an operating licence before any local licensing authority exercises its powers in respect of any premises licence. Where there is overlap, the authority which considers matters first in time is required to exercise any discretion it has in a properly lawful way, taking into account all material factors relevant to the exercise of its particular powers and giving each of those factors the weight, if any, it considers appropriate. Inevitably, that means that that first authority may make a decision which may make a decision by the second authority unnecessary. Thus, in considering an application for planning permission for a café which intended to operate much like a pub, the local planning authority (or the Secretary of State in its shoes) is entitled to take into account factors that would otherwise be relevant in an application for an on-licence and, if persuaded, refuse permission accordingly (*Lethem v Secretary of State for Transport, Local Government and the Regions* [2002] EWHC 1549; [2003] 1 P&CR 2 at [25]).

By these means, the Court of Appeal followed a now well-trodden route of trusting the good judgement of licensing authorities to decide where their writ should, and should not, run.

Two systems: one activity

A further example of overlapping jurisdictions comes in the control of sports grounds. The national regulator, the Sports Grounds Safety Authority ('SGSA'), is given the job of licensing 'designated football matches' (i.e., Premier and National League grounds as well as the national stadia under section 10 of the Football Spectators Act 1989. Meanwhile, local authorities have the job of issuing sports ground safety certificates under section 3 of the Safety of Sports Grounds Act 1975 for stadiaholding more than 10,000 spectators (or more than 5,000 for league football grounds).

Section 10 of the 1989 Act and section 2 of the 1975 Act provide power to attach conditions, respectively, to the licence and certificate. But which authority should do what? This is not specified,[4] although some clue may be given by section 13 of the 1989 Act, which empowers the SGSA to direct the local authority to include a specified condition in the certificate. This may be taken to imply that the national regulator will generally leave local matters to local regulation, intervening with a direction where it considers it necessary and a heavier hand, a licence condition, on other matters. Some weight is given to that suggestion by section 13, which requires the national regulator to 'keep under review' the discharge by local authorities of their functions. The SGSA also suggests in its Oversight and Licensing Policy (paragraph 23) that if the local authority fails satisfactorily to enforce any condition inserted under section 13, then the SGSA itself might insert the equivalent condition into the stadium licence. But, again, no bright line is set down in either piece of legislation, and it seems that the rule is that pragmatism rules.

Parliament rules, OK?

Since 2005, Parliament has interceded more substantively so as to police the boundaries between regulators. It has done so with limited success.

The Licensing Act 2003 made certain statutory authorities 'responsible authorities' (section 13), giving them the right to make representations on licence applications, bringing their special expertise into the equation. However, before the Act came into force, specific provision was made for fire safety in non-domestic premises by the Regulatory Reform (Fire Safety) Order 2005. In a break with convention, a direct attempt was made in the Order to fend off the possibility of duplication. It did this through Article 43, which stated that when the Order applied in respect of any premises, any condition by a different licensing authority 'has no effect in so far as it relates to any matter in relation to which requirements or prohibitions are or could be imposed by or under this Order.' The Order therefore scorched the ground of anything done by the licensing authority, rendering ineffective anything it does if the same had been, or even could have been, done under the Order.

It is hard to overstate the import of this provision on what remains a matter of life and death. It is not easy to understand why Parliament thought it necessary to intervene in this way. While a licensing authority might be loath to interfere where a matter has been covered by a different authority, it may wish to lay down a rule where the matter has

not been addressed by that other authority, or it is not clear whether it is to be addressed. This may particularly be true where a licensing authority, using its expertise in relation to events and alcohol-licensed premises, wishes to impose a different, perhaps stricter, rule than might arise otherwise. As it is, the upshot of the Order is that fire authorities never or almost never involve themselves in licensing matters, since any condition imposed as a result of their intervention will be nugatory. Arguably, therefore, the separation of powers dictated by the Order, while clear, is inimical to the aim of protecting the public.

In the same year, Parliament passed the Gambling Act 2005, as mentioned above, in which it did make some attempt to allocate functions between regulators. In certain respects, Parliament did so successfully, stating that the operating licence may not prevent the licensed activities from being carried on at a specified place or class of place (section 84), while a condition may not be imposed on a premises licence that prevents compliance with a condition of the operating licence (section 169).

However, in another respect, Parliament's attempt to deal with potential duplication was perplexing. The reason on this occasion was that, under the predecessor legislation, the Gaming Act 1968, the old Gaming Board advised that planning permission ought to be obtained before a licence was granted. Parliament wished to separate out the respective jurisdictions and so enacted in section 210 of the 2005 Act that a licensing authority should not have regard to the likelihood of obtaining planning consent.

The problem with such declarations is that they may have unintended consequences, in this case at least four. First, the question arose of why Parliament even needed to say that the likelihood of obtaining planning permission was irrelevant. Why was it relevant in the first place? After all, the material considerations for licensing, set out in section 153, have nothing to do with planning. Second, and linked, if the *likelihood* of obtaining planning is irrelevant, does that mean that the *existence* or *absence* of planning is relevant, and if so, how? Third, and if those matters are relevant, what about planning conditions? Specifically, if a planning permission contains a condition that would assuage a concern arising under the Gambling Act, is a licensing authority simply to ignore it?

The fourth concern was not just theoretical but very real. Under Schedule 9 of the Act, in competing applications for the limited stock of casino licences permitted under section 175, the determining criterion was the likely benefit the competing proposals would bring to the area. What if proposal A would bring supreme benefit if built but was never going to get planning permission, while proposal B brought modest benefit only but was a racing certainty to get permission? Taken literally, section 210 would require the prize to be awarded to a pie-in-the-sky scheme, which was never going to be built. This involved authorities in creative arguments relating to the likelihood of delivery rather than the likelihood of planning permission.

In short, it was not necessary to enact section 210 at all. By doing so, Parliament set unnecessary hares running rather than leaving authorities to the common-sense conclusion that, for the most part, planning brought nothing much to the party but might do if planning conditions had been imposed, which affected whether licence conditions were also necessary.

A yet further legislative demarcation came in the niche field of sexual entertainment venues, the briefest history of which is that they are 'strip joints' legislated into existence by the Policing and Crime Act 2009 when it was considered that the Licensing Act 2003 was overly benign in treating them the same as any other kind of entertainment and that they needed their own stricter legislative control. The transition from control under the Licensing Act 2003 to control under a specially devised consent scheme was achieved by The Policing and Crime Act 2009 (Commencement No. 1 and Transitional and Saving Provisions) (England) Order 2010. It will be recalled that in relation to fire control, the 2005 Order rendered premises licence conditions of no effect. The 2010 Order took it a stage further. It said that any conditions under the premises licence that 'relate expressly and exclusively to the regulation of [sexual] entertainment, or are inconsistent with, and less onerous than, the conditions in the [sexual entertainment venue] licence …. are to be treated as deleted.'

Again, this is a well-meaning intervention, but it comes with a host of difficulties. For example, what of a premises licence which says that all entertainment is to be on a stage? Most of what occurs on the stage is sexual entertainment, but some isn't. Is the condition one that relates expressly and exclusively to sexual entertainment in so far as it regulates sexual entertainment? If so, then the condition is treated as deleted, in which case the regulatory effect even on non-sexual entertainment is lost. Or does it survive, potentially permitting two sets of conditions to govern the same subject matter? How would you know whether a premises licence condition is inconsistent with and less onerous than a sexual entertainment venue licence condition? What if the former requires a pat-down search on entry and the latter a wand search? Must both be done, or does the latter expunge the former? And who decides?

Furthermore, while conditions on the sexual entertainment venue licence might serve to cull conditions on a premises licence, what if the former licence is not utilised, so that its conditions are not in play? This might arise if a venue simply chooses not to operate the former licence. For example, a venue might operate under the aegis of a frequency exemption under Schedule 3 paragraph 2 A(3) of the Local Government Act 1982, whereby the venue can run 11 sexual entertainment events a year without utilising its sexual entertainment venue licence and therefore free of the conditions on that licence. In that case, the licensing authority may rue the day the premises licence conditions controlling the exempt sexual entertainment were treated as deleted. This, then, is a further example of the legislature denuding the licensing authority of the opportunity to approach the matter with pragmatism.

The Protect Duty

If anything can be derived from the historical account in this article, it is that there is an absence of any consistently applied principles governing whether, when and how there should be legislative arbitrage between concomitant systems. Here, the adage that those who don't learn from history are doomed to repeat it is in full swing.

Arising from the horrific terrorist attack on the young audience at the Ariana Grande concert at the Manchester Arena, a public inquiry was convened under the charge of the distinguished former High Court judge (and licensing barrister) Sir John Saunders, who, in his report, formulated the concept of a Protect Duty, imposing an onus on venue operators to keep their customers safe from terrorism. The principle is salutary, indeed indisputable. But how is it to be flushed through the veins of modern regulatory practice?

To Sir John, it was obvious that the Protect Duty would be activated via existing consent regimes, including construction, planning and licensing. As to the latter, he said:

> Any building such as the Arena would require a licence to permit public entertainment and the sale of alcohol. Public safety has always been a consideration in the granting of licences and the clear terms of the Licensing Act 2003 mean that it still is.

However, when it came to the publication of the draft Terrorism (Protection of Premises) Bill, the interface between the new duties and existing systems was ignored. Instead, there are to be duties placed on operators (depending on venue size), among other things, to carry out enhanced terrorism risk assessments, to take all reasonably practicable measures to reduce the risk of terrorism and harm to individuals if it occurs and to produce security plans that have to be submitted to a new national regulator. If the regulator does not like the assessment or the plan, it has a range of powers, including shutting down the premises peremptorily and unilaterally imposing a penalty up to £18 m or 5% of the operator's worldwide revenue, whichever be the larger.

There is much that could be said about this, including that there is no need for yet another regulator. Larger venues and festivals already have detailed terrorism plans, and terrorism is routinely dealt with in premises licences, particularly for festivals, and is already encompassed in some licensing policies across the country.

For present purposes, however, the focus is on clashing systems. A premises licence, such as for a club, a theatre or a festival, might (and often does) require a careful entry system to prevent the importation of illegal items, check tickets and identify customers, which will create queues outside. They are commonplace and understood by customers who put up with the inconvenience and weather in return for assurance that their night out will be safe. A terrorism risk assessment, however, may well eschew the queue on the basis that it is a target for hostile vehicle activity.

If the competing priorities were judged by the licensing authority, as they ought to be, then the authority could be left to come to a sensible decision, trading off the risks of having and not having a queue. As it is, however, a national regulator, which has no role and has played no part in the licensing process, could swing in retrospectively to close the venue down and impose a swingeing fine, all because the venue has complied with its premises licence.

For this reason, trade associations have argued that the Protect Duty should be implemented through existing licensing legislation to avoid clashes, an entreaty that has not yet penetrated the walls of the Home Office. It perfectly underlines why there does need to be a coherent approach to potentially clashing systems and what can go wrong if there isn't.

A better way?

As has been identified, the legislative scheme for regulatory consents in respect of land is a result of historical accidents. It means that one venue may need several consents from different authorities, creating duplication of administrative procedures and incoherence in regulation.

Without extensive re-legislation, all regulatory consents for land could come under the aegis of the planning authority: alcohol, entertainment, late-night refreshment, gambling, sexual entertainment, pavement licensing, street trading and so forth.

A new operator would have the ability to make one application for all the consents it needs. A single document would contain all the consents it enjoys. The officer or committee determining applications would be immediately aware of all other consents affecting the premises and the conditions on such consents, so that they could set out to avoid duplication and conflicts.

This could, in turn, be reflected in more visionary strategies and plans, as advocated by some commentators (Kolvin 2023; Roberts 2020), overseen by a single authority, which would enable streamlining of functions within authorities and a cohort of officers who are capable of working across planning and licensing for a more coherent approach.

A similar suggestion was made by the Local Government Association in its 2014 report *Open for Business: Rewiring Licensing*, in which they advocated that 'Businesses should be able to apply to councils for a single licence tailored to their business needs.' The suggestion was recorded by the House of Lords Select Committee on the Licensing Act 2003

in its post-legislative scrutiny of the Act,[5] which concluded that the functions of licensing committees should be transferred to planning committees.

While not conclusively resolving all potential clashes for all time, the proposal would go a considerable way towards harmonising the various consent procedures facing operators and producing a more consistent and holistic approach.

Conclusion

Historically, legislation remained silent on the interface with complementary legislative regimes. While in principle this may have seemed unsatisfactory, in practice regulatory authorities exercised a measure of common sense in recognising the remit of other regulators and regimes. To take a paradigm example, a planning authority might decide to leave matters of hours to the licensing authority, but in an appropriate case, it might decide not to. In neither case is its decision likely to be unlawful.

In a similar vein, there is a degree of comity between authorities regulating the same subject matter, so that where one has pronounced one would expect the other to be guided if not led.

In more recent years, Parliament has taken upon itself to pronounce upon the proper approach to the interface, no doubt in an attempt to be helpful. However, a perusal of the legislation shows that unless all consequences are fully considered, there is a real danger that, in an attempt to clarify, Parliament has obfuscated, and even removed important powers designed for the protection of the public. In general, specialist regulatory authorities have proved more competent curators of their own powers on the facts of individual cases than Parliament, which necessarily acts generally and prospectively.

As a yet further regulatory system—the Protect Duty—nears the statute book, there is no current sign of a properly considered approach. In default of better alternatives, it would now be a salutary leap forward to bring all regulatory consents for licensed premises under a single regulatory body, so promoting a more visionary approach and more consistent decision-making.

Notes

[1] See Padfield v Minister of Agriculture, Fisheries and Food [1997] AC 997, 1030.
[2] Similar wording regarding duplication has plagued the licensing system now for two decades: see below.
[3] Approved by the Court of Appeal at [1994] 1 P.L.R. 79 at 96H–97A).
[4] An exception is section 10(5), which contemplates that conditions regarding seating in stadia will be a matter for the licence, subject to the direction of the Secretary of State.
[5] HL Paper 146, Report of Session 2016–17.

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The author has no competing interests to declare.

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