

Alcohol and Football Spectators: Time for a Choice?

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Spectators of football have long been subject to strict alcohol curtailment via s 2(1)(a) Sporting Events (Control of Alcohol etc.) Act 1985. Yet, despite its repeal by the Licensing Act 2003, no Commencement Order has been forthcoming. To tackle issues with alcohol related disorder at rugby, the Welsh Rugby Union have proposed their own response in a manner that, unlike s 2(1)(a), will not blanket ban alcohol from all. Even in its absence, an abundance of legislation exists to tackle alcohol related disorderly behaviour without the need for specific legislation.

Introduction

Alcohol, its consumption and effects have long been a concern to the legislature who in turn, have introduced numerous legislative measures. For example, The Defence of The Realm Act 1914 was enacted shortly after the outbreak of World War One. The government, believing alcohol consumption would negatively impact the war effort curtailed the times publicans could trade. The Licensing Act 1964 (LA 1964) introduced new permitted hours for venues, 11am until 1030pm with a break in between of two and a half hours. 24 years later, the Licensing Act 1988 (LA 1988) removed the ‘two and a half-hour rule’ and extended opening times until 11pm. Football has also been subject to legislative alcohol curtailment. Introduced following the deaths of 39 spectators preceding a European Cup Final in Heysel, Belgium to make stadiums “safer places for decent people” was The Sporting Events (Control of Alcohol etc.) Act 1985, with s 2(1)(a) forbidding the possession of alcohol in ‘direct view’ of the event.

The introduction of the Licensing Act 2003 (LA 2003) was advocated in the White Paper as a liberalising departure from the, to quote Jack Straw, ‘complex and anomaly riddled licensing systems’ of LA 1964 and LA 1988. Concern surrounded binge-drinking, where many indulged in as much alcohol as possible before the 11pm closures followed by a systematic mass exodus into city centres where disorderly behaviour was becoming common.

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Yet, despite similar consequences of binge-drinking and congregation being prevalent at football, the liberalisation of the licensing laws changed nothing. The LA 2003 did repeal S 2(1)(a), but 15 years later, no Commencement Order giving effect to this has been forthcoming. Therefore, this article discusses the similar issues faced at football that the LA 2003 sought to address within the Night Time Environment (NTE) and outlines alternative options available to the authorities should spectators of football ever be permitted to consume alcohol within view of the event.

Unintended Consequences

The LA 2003 aimed to reduce drunkenness and disorderly behaviour within the NTE by allowing some establishments to operate under 24-hour licences. By spreading the ‘kicking-out’ of revellers gradually rather than systematically and allowing customers to consume alcohol in a more moderate manner, this would lessen mass congregation in city centres and the culture of binge-drinking before the regular 11pm closure times.

In the football context, there are similar connotations. The s 2(1)(a) restrictions mean many spectators who are aware that alcohol availability is hampered binge-drink prior to the game. When in the stadium, many spectators congregate in the concourse bars at half-time, out of ‘direct view’ of the playing area and within the boundaries of the law. In similar fashion to the NTE, many spectators find themselves decanting systematically to one area where jostling, spilled beer and outbreaks of fights are known to occur. Liberalising the availability of alcohol by allowing football spectators to consume alcohol within view of the playing area could be one way of lessening half-time congregations and pre-match binge-drinking. That said, whether the LA 2003 has had the desired effect of reducing binge-drinking and/or alcohol related disorderly behaviour within the NTE is still a matter for debate.

In 2017, [The Licensing Act 2003: Post-Legislative Scrutiny](#) outlined that since 2005, alcohol related disorder has “gradually decreased.” [The 2013/14 Crime Survey of England and Wales](#) records that in 2005, there were 2m violent incidents in which 1.3m (53%) victims believed the offender to be under the influence of alcohol. In 2013/14, 1.1m violent incidents had been recorded with 704,000 (53%) perpetrators perceived to be under the influence of alcohol. Also seeing a decrease in arrests, is football. The [Home Office](#) outlined that in season 2016-2017 there were 1,577 arrests (excluding friendlies and under-21 matches) amongst the 39.9m spectators

who attended (0.004%). The low proportion of arrests clearly brings into question the requirement of such draconian legislation aimed solely at football spectators.

Changes in consumer behaviour have also seen a new challenging phenomenon emerge in that today, the lower prices in supermarkets and off-licences mean they account for 70% of alcohol sales. With this has what has come to be termed “pre-loading.” Like binge-drinking in that now, many enter the NTE highly intoxicated from alcohol consumed in private. This has similar undertones to the culture of many match going football spectators.

Therefore, if a Commencement Order were forthcoming, and s 2(1)(a) SE 1985 was removed from the statute books, whether this would reduce pre-match alcohol indulgence or concerns surrounding half-time congregation and disorderly behaviour is undetermined. Supermarkets and off-licences would still provide an alluring alternative given the higher price of refreshments in sports stadiums, something that rugby can attest to.

Blanket Bans

Rugby, which permits alcohol consumption within view of the event is not immune from alcohol related disorderly behaviour. “Pre-loading” and indeed half-time congregation to the bars is common despite it being legal to consume alcohol within view of the pitch. South Wales Police have often been critical of the behaviour of some spectators before, during and after international matches in Cardiff. So much so, that the Welsh Rugby Union (WRU) are considering implementing “dry zones” within Cardiff’s Principality Stadium to address issues of excessive language and anti-social behaviour that many spectators have reported.

The difference however, between football and the WRU’s proposal is that the criminal law will not enforce this. Clearly, football has a tainted history and the deaths of 39 Juventus supporters in Belgium provided the catalyst for the SE 1985 enactment. Nevertheless, critics have argued that the blanket nature in which the SE 1985 operates treats all football spectators to be problematic. Not all spectators who consume alcohol engage in disorderly behaviour. The majority are law-abiding citizens who will have their alcohol consumption curtailed for the actions of a small minority. The WRU may very well find this argument made to them should areas of the Principality Stadium become “dry zones.” Nevertheless, spectators retain the choice

to consume alcohol, albeit in certain sections of the stadium, something spectators of football do not have.

The WRU proposal only encapsulates parts of one stadium as opposed to a blanket curtailing across the sport, meaning in regional matches alcohol would remain readily available. This would be an option to the English and Welsh Football Associations and their associate clubs, should s 2(1)(a) be removed. “Dry zones” for example, within family stands and enforced as part of terms and conditions of entrance could be a plausible option, thus, removing the need for the criminal law to enforce a blanket restriction and liberalising football from the SE 1985. If disorderly behaviour did occur, legislation is in place for the authorities to utilise.

Alternative Legislation

A 2001 report into disorder associated with cricket considered specific legislation mirroring that of football. It concluded that the existing public order legislation should be tested in the first instance. Should it ever be permitted for football spectators to consume alcohol within view of the pitch, this same legislation would be available to the police should alcohol related, or indeed non-alcohol related disorder occur.

The most obvious choice appears to be drunk and disorderly contrary to s 91 Criminal Justice Act 1967. Any person in a public place who is drunk and acting in a disorderly manner is liable to arrest. This includes premises that the public are permitted access, whether for payment or otherwise (s 91(4)). In essence, a football, rugby or cricket stadium. S 5 Public Order Act 1986 is also available to capture threatening words or disorderly behaviour that is likely to cause an individual to be harassed, alarmed or distressed whether alcohol related or not. Alternatively, it is an option not to allow drunk spectators into stadia via terms and conditions of entrance. This is common within the NTE where staff will often refuse entry to anyone they deem drunk. The justification for this is that s 141 LA 2003 forbids the selling of alcohol to anyone who is knowingly drunk. Thus, the door staff play the role of protecting the bar staff from drunk consumers. At sporting events, stewards are well placed to follow suit and refuse entry on this basis.

The issue here, however, is what amounts to “drunk”? *The Post Legislative Scrutiny* outlined concerns that s 141 was being “routinely flouted,” evidenced by the fact that since 2005 there

have only been 92 prosecutions and 44 convictions. Evidence also pointed out that whilst it is obvious to determine that someone has had a drink, it is less obvious to determine the point at which someone becomes drunk. *R v Tagg* ([2001] EWCA Crim 1230) heard similar submissions, James Turner QC arguing that “drunk” was a vague concept, too vague to satisfy the requirements of precision that the ECHR requires. Rejecting this argument, Rose LJ confirmed the everyday meaning laid down by Goff LJ in *Neale v RMJE* ((1985) 80 Cr App R 20) satisfied precision requirements, that being; ‘someone who has taken intoxicating liquor to an extent which affects his steady self-control.’ Notwithstanding, to what extent self-control must be affected is not sufficiently determined.

Conclusion

Whether the LA 2003 has had the desired effect on NTE disorderly behaviour is still a matter for debate. For football spectators and despite the repeal of s 2(1)(a), it is certain that the liberalisation of alcohol legislation changed nothing. Rugby and cricket experience disorder amongst some of its spectators, both rely on existing legislation and the WRU is demonstrating ways in which to accommodate those who want to consume alcohol and those who do not. With this, spectators of rugby will have something football spectators do not: a choice.

In the absence of s2(1)(a), existing legislation is in place to ensure that football stadiums remain “safe places for decent people.” Much has improved with football; modern stadia; better stewarding; CCTV; and even the attitudes of many spectators themselves. The low proportion of arrests also demonstrate that football is changing for the better. The WRU proposal is sensible and could easily be adopted at football stadia where most spectators are law abiding. The time has clearly come to give football spectators a choice and allow them to consume alcohol as part of the match-day experience.