

Rebalancing the Licensing Act – A Home Office consultation

Consultation Question 1: What do you think the impact would be of making relevant licensing authorities responsible authorities?

The Steering Group (SG) thought that although there may be benefits there were also concerns that there may be pressure put on Licensing Authorities by Councillors, residents or other responsible authorities.

We would therefore welcome the legislation as long as it is written carefully to ensure that the Licensing Authority's independence of operation is assured.

There must also be care taken to avoid conflict of interest where advice is given to responsible authorities and Committee by officers.

There are sufficient checks and balances in place to ensure that authorities do not abuse the powers granted in respect of reviews particularly having regard to Article 6 ECHR and the appeals process.

This would also need acknowledgement of extra resource requirements via fees that would be incurred as a result of acting as a responsible authority.

Consultation Question 2: What impact do you think reducing the burden of proof on licensing authorities will have?

It is a failing within the Licensing Act 2003 that the applicants do not have to make a case for being granted a licence where representations are made. They merely have to show there is not a case to refuse an application. The present processes restrict Licensing Sub-Committees in questioning wider issues such as the possible impact on anti-social behaviour in the locality.

If what is meant is altering the onus of proof and test before steps are taken, it would be helpful for the applicant to be required to demonstrate impact and mitigation but would need evidence to raise that.

SG are concerned that there could be an increase in Hearings as a result. This in turn could lead to Committees imposing more conditions on Premises Licences.

In all it could mean greater costs for Licensing Authorities (Hearings) with the enhanced prospect of appeals if decisions are seen by lawyers to be based on 'flimsy' evidence.

Consultation Question 3: Do you have any suggestions about how the licence application process could be amended to ensure that applicants consider the impact of their licence application on the local area?

Firstly the burden of proof should be reversed so that applicants have to justify their application and provide evidence of effective management processes being in place to ensure that the licensing objectives are actively promoted.

The applicant should demonstrate that an application is not detrimental to the area.

There should be a 'justification box' for granting an application included within the Operating Schedule and this must be completed.

Move away from current practice of presumption to grant.

Licensing Committees should have the power to set time limits for the implementation of conditions and to call back premises licence holders to ensure that the implementation is complete without the need for a formal review being called.

Consultation Question 4: What would the effect be of requiring licensing authorities to accept all representations, notices and recommendations from the police unless there is clear evidence that these are not relevant?

Police evidence should carry significant weight in any event.

The effect of pre-determining would be to lessen the discretion of the Licensing Sub-Committee and put the applicant in the position of having to rebut the police assertions.

The independence of the Committee (elected members) in its quasi-judicial role is central to this Act. To require it to defer to one particular Responsible Authority's viewpoint is to prejudice the outcome.

All those appearing before the Hearing need to provide evidence sufficient to satisfy the Committee; weighting it in favour of one body is not within the intention or spirit of the Act.

There is the potential of a challenge under Article 6, Human Rights Act.

If the authority have to be explicit that the police evidence has not been relevant it would damage relationships and public confidence.

Consultation Question 5: How can licensing authorities encourage greater community and local resident involvement?

The view of the Steering Group is that we already offer the opportunity for full engagement and are fully engaged with our communities.

Consultation Question 6: What would be the effect of removing the requirement for interested parties to show vicinity when making relevant representations?

The Act focuses on the effect that the operation of a particular premises has on those in the immediate vicinity.

It is essential that any person or body making a representation must show that they are directly affected by the activities of the premises or the results of such activities. In order to do so a causal link would be needed to be shown.

There would be an increase in of irrelevant representations from people and bodies with general concerns or particular prejudices against licensed premises.

To allow representations from people living or working some distance away distorts the purpose of the Act.

Consultation Question 7: Are there any unintended consequences of designating health bodies as a responsible authority?

The value of health bodies is at strategic level. The Act focuses on individual premises; however, health bodies would not have the micro data to inform that process.

Consultation Question 8: What are the implications in including the prevention of health harm as a licensing objective?

Showing a link of health harms to alcohol premises, density or hours etc would be difficult and as a licensing objective it would be impractical and unenforceable.

Consultation Question 9: What would be the effect of making community groups interested parties under the Licensing Act, and which groups should be included?

It is difficult to see what would be gained by the inclusion of such groups. Where an individual premise is failing to actively promote the licensing objectives these groups can make representations to the police or will in fact already be representing persons living or working in the vicinity.

There would be a rise of single purpose 'community groups', pressure groups with a single aim – to stop or close down all licensed premises in their area.

How would their bona fides be checked? What would amount to such a group?

The current system sufficiently identifies and encourages the public to participate in the process.

The recent addition of members of Licensing Authorities ensures a proper democratic spread of power.

There would be an Increased cost of hearings to be borne by LA's or applicants if fees to cover costs.

Consultation Question 10: What would be the effect of making the default position for the magistrates' court to remit the appeal back to the licensing authority to hear?

There was a general consensus that the SG didn't understand exactly what the intention is in this proposal.

On the surface it would seem to make an appeal worthless, with time and money wasted only to have the matter referred back to the Licensing Committee.

The SG would appreciate greater clarity regarding this issue.

Consultation Question 11: What would be the effect of amending the legislation so that the decision of the licensing authority applies as soon as the premises licence holder receives the determination?

This is seen as an excellent idea. Experience shows that appellants typically appeal the decision to delay it's financial consequences knowing that the appeal will not be heard for many months and also to avoid a suspension until conditions are complied with before appeal and then appeal withdrawn.

SG recommend that it follows the same route as the Interim Steps allowed after the call for an Expedited Review (S. 53, Licensing Act 2003).

Make it clear that there is no route to compensation for loss of trade provided the LA took steps in good faith.

Pressure for court resource for earlier appeal hearings.

Consultation Question 12: What is the likely impact of extending the flexibility of Early Morning Restriction Orders to reflect the needs of the local areas?

We note that this only applies to the Sale of Alcohol, not Regulated Entertainment or Late Night Refreshment, (remembering that the consumption of alcohol is not regulated).

Given that crime and disorder and public nuisance are associated with both Regulated Entertainment and Late Night Refreshment we have difficulty in understanding how using the single criteria of the Sale of Alcohol can assist. We are therefore not in favour of this measure.

Allowing the local authority to decide at any time between 00:01 and 06:00 hours would permit local needs to be considered. However it would have to apply to all premises with no discretion between good and bad.

Consultation Question 13: Do you have any concerns about repealing Alcohol Disorder Zones?

No.

Consultation Question 14: What are the consequences of removing the evidential requirement for Cumulative Impact Policies?

Removing the evidential basis for a cumulative impact policy would make them easier to put in place however it would also make them more open to legal challenge.

There would be more pressure on Licensing authorities to designate Saturation Areas on little evidence.

We believe that the current position is appropriately weighted.

Consultation Question 15: Do you agree that the late night levy should be limited to recovery of these additional costs? Do you think that the local authority should be given some discretion on how much they can charge under the levy?

The Steering Group feel that this system would not be workable.

How do Licensing Authorities designate areas, or parts of areas?

How is the fee collected, by whom, and how is it distributed?

Consultation Question 16: Do you think it would be advantageous to offer such reductions for the late night levy?

As per Question 15, plus how to make the value judgement to reduce one premises levy as opposed to another?

The whole process is open to challenge.

Our view is that this is unworkable.

Consultation Question 17: Do you agree that the additional costs of these services should be funded by the late night levy?

No.

But if a levy could be introduced that could be practical then Yes. Such income should however be ring fenced to ensure that it was not pulled into the main Council budget.

Consultation Question 18: Do you believe that giving more autonomy to local authorities regarding closing times would be advantageous to cutting alcohol-related crime?

1. With all premises in an area closing at the same time won't this move away from the aim of the Act to stagger closing times?
2. A tendency to zone areas could result in large movement of people from zone to zone.
3. The current process works allowing late night transport to cope with patron numbers.
4. How would this operate with current late night premises, retrospectively?
5. Each application is currently treated on its own merits. This should remain the position.

Consultation Question 19: What would be the consequences of amending the legislation relating to TENs so that:

All the responsible authorities can object to a TEN on all of the licensing objectives?

The police (and other responsible authorities) have five working days to object to a TEN?

The notification period for a TEN is increased, and is longer for those venues already holding a premises licence?

Licensing authorities have the discretion to apply existing licence conditions to a TEN?

The main concern with TENs is public nuisance, therefore Police and Environmental Protection should have the right to object. Beyond that the Licensing Authority should have the discretion to consult whoever it feels is most appropriate, as per the Minor Variation process. To extend the ability to object to all Responsible Authorities is time consuming and bureaucratic.

Yes. There was some debate on this issue with some thoughts that non-Premises Licence holders (the amateurs) should be required to give greater notice than those who are in the trade (the professionals). The general consensus however was that it should be the same for all and that period should be 15 Working Days, this being a balance between a longer consultation period and the purpose of TENs, to allow short notice 'licences'.

Yes. Experience shows that Premises Licence holders will use the system to circumvent conditions on their licence which were imposed to protect communities.

Also can some thought be given to allowing Licensing Committees at a Hearing to add a Condition restricting or banning TENs on a Premises Licence?

Consultation Question 20:

- a. What would be the consequences of Reducing the number of TENS that can be applied for by a personal licence holder to 12 per year?**
- b. Restricting the number of TENS that could be applied for in the same vicinity (e.g. a field)?**

No. Leave it at 50 for Personal Licence holders. There are some businesses that only operate 'outside bars', such a restriction could put them out of business. To avoid misuse we would ask for a central database to be established for TENS. (At DVLA?)

Yes. The current position is open to abuse.

Consultation Question 21: Do you think 168 hours (7 days) is a suitable minimum for the period of voluntary closure that can be flexibly applied by police for persistent underage selling?

Yes.

Consultation Question 22: What do you think would be an appropriate upper limit for the period of voluntary closure that can be flexibly applied by police for persistent underage selling?

See Q21 above.

The Steering Group felt that if the matter was sufficiently serious to consider more than 7 days closure the Police should be seeking a Review of the Premises Licence or a prosecution through the courts.

We would seek the removal of the word 'persistent' in the legislation.

Consultation Question 23: What do you think the impact will be of making licence reviews automatic for those found to be persistently selling alcohol to children?

Positive. The threat of an automatic review hanging over premises licence holders may concentrate the mind and ensure that proper preventative arrangements are in place. However clarification is sought as to who would be the applicant for a review.

Consultation Question 24: For the purpose of this consultation we are interested in expert views on the following.

- a. Simple and effective ways to define the 'cost' of alcohol**
- b. Effective ways to enforce a ban on below cost selling and their costs**
- c. The feasibility of using the Mandatory Code of Practice to set a licence condition that no sale can be below cost, without defining cost.**

After some debate it was felt that this issue is not one for Licensing Authorities. However, any measures introduced requiring local authority enforcement need to have clear, simple criteria not requiring investigation for each product or premises.

Consultation Question 25: Would you be in favour of increasing licence fees based on full cost recovery, and what impact would this have?

Yes, and review regularly. All Licensing authorities are currently working at a deficit within the Licensing Act. The fees do not currently cover costs and there are problems with persistent non-payers of the annual fee.

Full cost recovery should take account of the two features of the regulation of this Act for Licensing Authorities, administration and enforcement.

Also any steps taken which increase hearings will require acknowledgement in costs.

Consultation Question 26: Are you in favour of automatically revoking the premises licence if the annual fees have not been paid?

Yes.

Consultation Question 27: Have the first set of mandatory conditions that came into force in April 2010 had a positive impact on preventing alcohol related crime?

No discernable effect whatsoever.

Consultation Question 28: Would you support the repeal of any or all of the mandatory conditions (conditions (a) – (e))?

- (a) Ban irresponsible promotions in the on-trade
- (b) Ban dispensing alcohol directly into the mouths of customers
- (c) Ensure that free tap water was available in all licensed premises in the on-trade
- (d) Ensure they have an age verification policy in place
- (e) Ensure they are able to offer smaller servings of beer, wine and spirits.

There is general support for the repeal of the Mandatory conditions as there are none that are considered materially helpful. Conditions can be imposed where required and if Members and possibly Licensing Authorities as a responsible authority can review this is achievable.

Consultation Question 29: Would you support measures to de-regulate the Licensing Act, and what sections of the Act in your view could be removed or simplified?

The Steering Group took the view that it would support deregulation where it gave clarity.

The Steering Group also felt there should be the ability to:

1. Call for the Review of a Personal Licence.
2. Call for the Review of a Designated Premises Supervisor.
3. Put Conditions on a TEN.
4. Put a Condition of no TEN's on a Premises Licence.
5. Require a DPS to have 'day to day control' on Premises (possibly have more than one DPS to ensure this is achievable).
6. A person should only be DPS of one Premises (responsibility).
7. There should be a central database for Personal and Premises Licences and TENs.

8. Hot drinks should be removed from Late Night Refreshment.
9. The requirement to review and publish a statement of policy every 3 years should be removed.