

REQUEST FOR VIEWS ON THE CONSULTATION DOCUMENT REBALANCING THE LICENSING ACT

RECOMMENDATIONS

- 1.1 To consider the information contained in this report regarding the request for views on the consultation document Rebalancing the Licensing Act from the Home Office.
- 1.2 To respond to consultation questions on behalf of the Council by either:
 - a) Agreeing all of the responses at this meeting, or
 - b) Appointed a small representative working group to draft responses on behalf of the Committee, or
 - c) Authorising the Chair of Licensing to respond to the Home Office on behalf of the Committee.

SUPPORTING INFORMATION

- 2.1 The Government is planning a review of the Licensing Act 2003. Its stated aim is to rebalance the licensing process in favour of local communities by giving greater powers and flexibility to local authorities (licensing authorities) and encouraging greater involvement of by local community groups. The consultation document, 'Rebalancing the Licensing Act', sets out its proposals and seeks views on a range of licensing issues; a copy of the document is attached to this report at Appendix 2.
- 2.2 Whilst the government is seeking views on the proposals from a wide range of interested parties, it is particularly keen to receive the views of licensing authorities. Members are therefore asked to consider the consultation questions and agree responses, which need to be returned to the Home Office by 8 September 2010.
- 2.3 In an effort to assist Members in this process, licensing and legal officers have set out their comments at Appendix 3.

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Background papers:	None
List of appendices:	Appendix 1 – Implications Appendix 2 – Rebalancing the Licensing Act Consultation Document Appendix 3 – Draft Responses to Consultation Questions

IMPLICATIONS

Financial

1. None directly arising.

Legal

2. Comments of legal officers are set out in the comments in Appendix 3.

Personnel

3. None directly arising.

Equalities Impact

4. None directly arising.

Corporate objectives and priorities for change

5. The recommendations contained in this report contribute to the corporate objectives of **creating a 21st Century City Centre, Making Us Proud of Our Neighbourhoods** and **Giving Excellent Services and Value for Money**.

APPENDIX 2

Rebalancing the Licensing Act Consultation Document

APPENDIX 3

Draft Responses to Consultation Questions

Consultation Questions	Responses
1. What do you think the impact would be of making relevant licensing authorities responsible authorities?	At present licensing authorities can only refuse or remove a licence, or impose conditions on a licence upon review if a relevant representation has been made by a responsible authority. There have been many occasions since the Licensing Act was introduced where this licensing authority was unable to consider the licence of a local business because the responsible authorities either failed to, or chose not to, make a representation. In these circumstances this licensing authority believes that local concerns were not adequately represented. We therefore welcome the proposal to make licensing authorities responsible authorities and to enable them to refuse, remove, or review licences without a representation from one of the other responsible authorities.
2. What impact do you think removing the burden of proof on licensing authorities will have?	The proposal would give greater flexibility to the licensing authority and allow a wider range of actions. However, decisions will still need to be based on sound evidence and will need to be demonstrably fair, consistent and transparent.
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?	Most of the likely issues are already contained within the licensing objectives and should therefore be covered within the business 'operating schedule' contained within their application. However, the specific question of 'impact on the local area' could be included on the application form to allow the applicant's response to be considered by the responsible authorities.
4. What would be the effect of requiring licensing authorities to accept all	Significant weight is already given to representations / advice from the police. However, licensing authorities often receive differing views and advice from responsible authorities and

representations, notices and recommendations from the police unless there is clear evidence that these are not relevant?	interested parties. In the interests of fairness and consistency licensing authorities need such representations, including those from the police, to be supported by evidence. Representations that may not be objectively justified are likely to be challenged by applicants and their legal representatives. Failure to require evidence based justifications would substantially weaken the licensing authorities' position at an appeal. The cost implications in such event are of course the licensing authorities', and not for the police, to meet.
5. How can licensing authorities encourage greater community and local resident involvement?	This licensing authority already publishes (on our website) a weekly list of all premises applications, and a copy of the list is sent to all local councillors. It may also be possible to include local Neighbourhood Panels / Forums in this communication exercise and invite comments from them as a local community group (see question 9). Another possible option would be to write to all neighbouring properties within a defined distance to advise of applications (as with planning applications). However, this would significantly add to the administrative burden on either businesses or licensing authorities (whichever was tasked with notification).
6. What would be the effect of removing the requirements for interested parties to show vicinity when making relevant representations?	This proposal would lead to an increase in representations from outside of the local community, and these are likely to be based on a personal view or bias, rather than on genuine concerns about the impact on their community. It is appropriate to question whether a representation from a resident of one suburb or village about an application in a different suburb or village is relevant. This authority believes that the 'vicinity' requirement should remain but have a clearer definition within the Act.
7. Are there any unintended consequences of designating health bodies as a responsible authority?	It is difficult to see how health bodies could make representations about individual licence applications. Whilst the A&E data is valuable to show trends and costs, and their contribution to the wider 'alcohol harm' agenda is without question, applying this approach to individual premises applications is extremely difficult. It is almost impossible to assess the contribution of one licensed premises to the wider 'health' of the community.

<p>8. What are the implications in including the prevention of health harm as a licensing objective?</p>	<p>(See also CQ7). Whilst we support the principle that alcohol strategy should focus on health as much as crime and disorder, and we acknowledge that health considerations should inform the licensing policy, it is still difficult to see how 'health harm' could be applied to individual applications or reviews.</p>
<p>9. What would be the effect of making community groups interested parties under the Licensing Act, and which groups should be included?</p>	<p>The effect would be to encourage greater involvement of recognised groups within the local community. Such groups should include:</p> <ul style="list-style-type: none"> - Housing associations or registered social landlords. - Neighbourhood panels / forums - Formally constituted residents associations - School governors - GP practices <p>Defining recognised groups will be very difficult and guidance will be required to ensure a consistent approach.</p>
<p>10. What would be the effect of making the default position for magistrates' court to remit the appeal back to the licensing authority to hear?</p>	<p>A decision for appeals to be remitted back to the licensing authority as a default position would place additional burdens on the licensing authority (additional hearings). Arguably, it places a similar burden on all other parties with an interest in the appeal who have taken part in the proceedings. It seems logical to retain the status quo that if the magistrates' have heard sufficient representations to enable a decision to be made, it proceeds to make a determination on merit. If remitting a decision back remains a possibility following this consultation process, it stands to reason that in the interests of fairness and to protect the human rights of individuals, the magistrates' should give clear directions, including but not limited to the need for the licensing authority to secure that a differently constituted panel deals with the matter.</p>
<p>11. What would be the effect of amending the legislation so that the decision of the</p>	<p>We welcome this proposal. We believe it will provide a very effective deterrent against persistent poor management or unlawful activities. However, we do have concerns about the</p>

licensing authority applies as soon as the premises licence holder receives the determination?	implications of significantly higher costs / compensation being awarded in the event of successful appeals at magistrates' court. Any resulting guidance would need to be clear that if the basis of the original decision is found to be reasonable and justified, notwithstanding any appeal decision that may overturn that decision e.g. on the basis of supervening circumstances between the date of the decision and the date of the appeal, there should be no costs consequences for the licensing authority unless the decision to proceed with the appeal in the knowledge of those supervening circumstances was itself unreasonable.
12. What is the likely impact of extending the flexibility of Early Morning Restriction Orders to reflect the needs of local areas?	We welcome the flexibility provided by the proposed change. However, we recognise that the new powers could lead to a return to the 'terminal hour' as in previous legislation, but on a more localized basis.
13. Do you have any concerns about repealing Alcohol Disorder Zones?	No.
14. What are the consequences of removing the evidential requirement for Cumulative Impact Policies (CIPs)?	We do <u>not</u> support this proposal. We believe that all decisions of licensing authorities should be based on the evidence presented to them, without which they cannot make a fair, rational and transparent decision. The proposed changes do <u>not</u> reduce the burden on licensing authorities. We do not accept the view that 'this will give greater weight to the views of local people' since all parties would be involved in the consultation process for CIPs.
15. Do you believe that the late night levy should be limited to the recovery of these additional costs? Do you think that local authorities should be given some direction on how much they can charge under the levy?	We support the introduction of a late night levy, which should be used to recover additional costs incurred by both the authorities of the police and the licensing authority. We believe that licensing authorities should be given some discretion on how much can be charged via the levy.

<p>16. Do you think it would be advantageous to offer such reductions for the late night levy?</p>	<p>We do not support this proposal. It would create administrative burdens for the licensing authority as businesses join and leave different 'best practice schemes'.</p>
<p>17. Do you agree that additional costs of these services should be funded by the late night levy?</p>	<p>Yes, we welcome this proposal.</p>
<p>18. Do you believe that giving more autonomy to local authorities regarding closing times would be advantageous to cutting alcohol-related crime?</p>	<p>Whilst the additional flexibility of action would be welcomed we recognise that closing times are only one part of a broader strategy to tackle alcohol related crime.</p>
<p>19. What would be the consequences of amending the legislation relating to TENS so that:</p> <ul style="list-style-type: none"> a) All the responsible authorities can object to a TEN on all of the licensing objectives? b) The police (and other responsible authorities) have five working days to object to a TEN? c) The notification period for a TEN is increased, and is longer for those venues already holding a premises licence? d) Licensing authorities have the discretion to apply existing licence 	<p>The proposal will allow more control over temporary events and we support all 4 elements (a-d).</p>

conditions to a TEN?	
<p>20. What would be the consequences of</p> <p>a) Reducing the number of TENs that can be applied for by a personal licence holder to 12 per year?</p> <p>b) Restricting the number of TENs that could be applied for in the same vicinity (e.g. a field)?</p>	<p>As in CQ19, we support the proposals as they promote more local control over temporary events. However, for some personal licence holders who trade, for example, at markets across the country, the reduction from 50 to 12 may have a significant impact on their business / ability to trade.</p>
<p>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 under-age selling?</p>	<p>Yes, we believe this is a reasonable minimum period. However, we believe that this voluntary closure power should also be available to Trading Standards authorities, who have similar enforcement responsibilities in respect of under-age selling.</p>
<p>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 under-age selling?</p>	<p>We believe that an appropriate period would be 28 days.</p>
<p>23. What do you think the impact will be of making licence reviews automatic for those found to be persistently selling alcohol to children?</p>	<p>This would be a deterrent to underage selling and we support this approach, subject to clear guidelines defining relevant triggers, who may and how to activate a trigger, in order to ensure fairness and consistency.</p>

<p>24. For the purpose of this consultation we are interested in expert views on the following:</p> <ul style="list-style-type: none"> a) Simple and effective ways to define the 'cost' of alcohol. b) Effective ways to enforce a ban on below cost selling? 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. 	<p>Whilst it is possible to define the cost of any product (wholesale purchase cost plus 'on costs' such as transport, storage, handling, premises costs etc.), and whilst large businesses will do this as part of their purchasing process, it is extremely difficult to verify this for the purposes of enforcement. For larger companies it would be relatively easy to disguise the full or true cost of any particular product.</p> <p>Such a ban would be extremely difficult to enforce and would therefore be ineffective as an approach. We would suggest that a better approach would be for the government to set a minimum price per unit of alcohol for each type of alcoholic drink ((beer, cider, table wine, fortified wine, spirit etc.) for fair and consistent both 'on' and 'off' sales. This would be enforceable, but may penalise some responsible drinkers. This 'minimum unit price' approach is supported by a recent study by this authority's Trading Standards service. They found alcohol on sale for as little as 15p per unit; this was <u>not</u> being sold at below cost price. Such products should in our opinion, have a minimum unit price (e.g. 50p) which is easy to measure and enforce.</p> <p>This could prove unenforceable and is unlikely to be effective.</p>
<p>25. Would you be in favour of increasing licence fees based on full cost recovery, and what impact would this have?</p>	<p>We would be in favour of this approach, which is the same as that used successfully in taxi licensing. It would require annual fee setting based on anticipated number of licences and planned expenditure. This would remove the need for liquor licensing enforcement / administration to be subsidised by other services. However, it would place an additional cost burden on local businesses, although this is likely to be relatively small.</p>
<p>26. Are you in favour of automatically revoking the premises licence if annual</p>	<p>Yes. Licence fees should be submitted annually at the appropriate time and failure to do so should result in revocation. This licensing authority is currently owed several £000's in unpaid</p>

fees have not been paid?	licence fees and has had to write off several £000's more. This change would be welcomed.
27. Have the first set of mandatory conditions that came into force in April 2010 had a positive impact on preventing alcohol-related crime?	It is too early in the process to assess the impact of these conditions.
28. Would you support the repeal of any or all of the mandatory conditions (a-e)?	No, they represent a useful additional approach that the licensing authority and its partners need to use more effectively. However, we would welcome guidelines on 'irresponsible drinks promotions' to ensure that a fair and consistent approach is being adopted.
29. Would you support the measures to de-regulate the Licensing Act, and what sections of the Act in your view could be removed or simplified?	In general, the Licensing Act provisions are 'fit for purpose' and work well, although there is particular reliance upon the contribution of the responsible authorities, which has sometimes been inadequate. We feel that the proposals set out in the consultation document largely address the issues that the licensing authority would seek to change.