

## Rebalancing the Licensing Act - Response

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

The absence of discretion on the part of the licensing authority has been a fundamental flaw in the Licensing Act and has meant that the hands of the authority are tied unless a responsible authority or interested party makes representations on an application or asks for a review or a licence or club certificate. In particular this has restricted the opportunity for the authority to challenge inadequate operating schedules that form part of applications or convert these into meaningful and enforceable conditions if there are no representations from responsible authorities or interested parties.

Residents who live near premises that are causing problems in a local area are often reluctant to trigger a review of a premises licence but if the licensing authority could undertake a review upon the weight of evidence that has been brought before them, this would enable reviews to be dealt with more frequently and expeditiously. Although it could be argued on the part of the applicant or licence holder that this might prevent a fair hearing, in reality this is no different to the situation in terms of the other licences that the authority deals with, including the Gambling Act 2005. The Council would therefore welcome this proposal as a much needed modification of the existing legislation

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

The Council has no strong views on this matter.

### **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?**

The Council is uncertain of the value of such a change. It will remain a matter for responsible authorities and interested parties to submit representations with regard to the impact of an application on a local community and this will not be obviated by an assessment on the part of the applicant.

### **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?**

The intention of this proposal is unclear.

If it is being suggested that the licensing authority is required to accept and comply with all recommendations from the Police such as the refusal of an application or revocation of a licence, this would remove any discretion on the part of the licensing authority and be contrary to the rules of natural justice by denying an applicant or licence holder the opportunity to submit representations at a hearing.

The Police have ample opportunity to make representations under the current legislation which are relevant to the licensing objectives. The Council does not support the need for any further powers to be made available.

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

Licensing authorities already consult widely in their statement of licensing policy but few replies are received, even from responsible authorities. It is highly unlikely that any further consultation will bring more replies.

There is a danger of consultation fatigue. Few residents comment on policy formulation, irrespective of the measures that authorities go to to encourage responses. Residents only become interested when they are affected by a proposal for a wind farm, landfill site, sex establishment or in this case nightclub near where they live.

The Council suggests that the current arrangements are satisfactory in enabling residents to make representations as interested parties.

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

The Council does not support a change in the definition of interested party. If anyone was able to submit representations, a situation could arise where patrons of a licensed establishment could make representations in favour an application for longer hours or to retain existing hours of operation in the case of a review. In terms of the volume of representations that could be generated, they could overwhelm the representations of the neighbours who live in close proximity to the premises and whose lives may be being blighted by disorder or public nuisance.

If this is to be introduced, some form of weighting would be necessary to give greater weight to the views of those who live in the vicinity of the licensed premises as opposed to those people who may live in nearby towns or villages but who travel to the premises to enjoy the later hours specified in the premises licence.

A further complication is that the present legislation enables an interested party to appeal against a decision by a licensing authority. If everyone was classed as an interested party, it would potentially mean that a person living some miles away from a licensed premises or in a different town could appeal against the authority's decision or the conditions that had been applied.

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

The legislation would need to be clear as to which health body is entitled to make representations – is it the local PCT or the Trust administering the local A & E hospital? Could a mental health trust make representations, or an ambulance trust? And might a local medical practice in a town or village be better placed to comment on the impact of licensed premises in their community as they have to deal at first hand with alcohol related incidents?

There is merit in the opportunity for a health response, especially in the case of large events such as open air festivals where their views cannot be formally taken into account at the moment.

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

The Council would welcome the change but those making representations would have to be able to demonstrate a causal link between the adverse effects of alcohol

consumption and individual licensed premises. Otherwise, a health authority or hospital trust could simply object to all licensed premises applications on the grounds that alcohol affects the health of the consumer.

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

Again care would be needed in identifying such community groups, especially given the huge number of voluntary groups that exist. It could be argued that public organisations such as school governing bodies and registered social landlords might be appropriate but they could be regarded as interested parties at the moment in that they are bodies representing persons who live in the vicinity of the premises. The only advantage would be that they would have a copy of the application served on them as a responsible authority

However this would then place an additional duty on the part of applicants and licensing authorities to identify and hold information on each of the community groups located in the vicinity of the licensed premises which could become an onerous task. On balance, the Council suggests that community groups are already catered for by being defined as interested parties and that any further change is unnecessary and fraught with potential complications.

**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?**

The Council's experience to date is that there have been few appeals as a result of the licensing authority's decisions. Indeed in Huntingdonshire, there has been only one appeal in the 5 years since the Act was implemented. If it can be demonstrated that a fair hearing has been held at which all parties have had an opportunity to submit representations and question other parties, there seems little appetite for an appeal.

What will no doubt have swayed parties when considering an appeal is the costs involved. If appeals were to be remitted back to the licensing authority, requiring a different sub committee in the interests of impartiality, aggrieved applicants and interested parties will be more likely to appeal as little costs will be incurred, other than on the part of the licensing authority itself. In other words, aggrieved residents would have nothing to lose and there could be an explosion in the number of appeals that are submitted.

The Council would therefore not support this proposal.

**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?**

The Council welcomes this proposal. Notwithstanding the scarcity of appeals, it does take many months for an appeal to be heard by a magistrates court during which time the problems that have given rise to the licence review etc. can continue unabated.

What would be preferable is for the licensing authority to have the discretion to make any decision effective either immediately if that were thought to be necessary or to await the outcome of an appeal.

**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?**

The Council supports this proposal.

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

The Council agrees with the sentiments expressed in the consultation paper and has no objection to the demise of ADZs.

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

It is unlikely that cumulative impact policies will be necessary in Huntingdonshire's market towns so other authorities are better placed to comment on this proposal.

**Consultation Question 15a: Do you agree that the late night levy should be limited to recovery of these additional costs?**

It is appropriate that licence holders should contribute towards any extra costs incurred as a result of the activities that they provide. However the levy would have to be proportionate. Licence holders should not be required to pay for additional policing if those officers are not dedicated to mitigating the impact of the licensed premises and are merely used elsewhere to offset reductions in policing budgets. Indeed this could give rise to conflict between licence holders who do not think they are getting value for money and residents who expect officers to be diverted to resolve problems elsewhere even though the latter may have been funded by premises with late licences.

**Consultation Question 15b: Do you think that the local authority should be given some discretion on how much they can charge under the levy?**

Local authorities will require substantial discretion. If the levy were to be applied in a blanket fashion, this could penalise those responsible licence holders whose premises are well managed and do not create problems in their localities. Failure to do this would discourage licence holders from implementing measures of their own as they would still be required to pay the levy to deal with problem premises.

**Consultation Question 16: Do you think it would be advantageous to offer reductions for the late night levy to premises which are involved in schemes to reduce the additional policing costs such as Best Bar None?**

See answer to previous question.

**Consultation Question 17: Do you agree that the additional costs of taxi-marshalling or street cleaning should be funded by the late night levy?**

In principle, any additional costs arising from late night premises should be reimbursed by licence holders but there is a danger of a number of organisations asking for funding from the levy such as the local A & E hospital or ambulance trust. It might also be difficult to identify the origin of the problems, e.g. litter is just as likely

to be dropped by those who frequent a licensed premises during an evening as opposed to the early hours of the following morning.

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

The Council welcomes the flexibility being proposed but is unable to predict whether this will reduce alcohol related crime.

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

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

The Council welcomes this proposal. Events with a TEN can have an adverse effect on neighbouring residents and it would be helpful for the licensing authority to have regard to the question, for example, of noise nuisance.

There is however the danger that more hearings would be required at short notice in the event of a greater number of representations being received.

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

The Council welcomes this approach. The current timescale is much too short and effectively debars any representations from the Police.

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

The Council welcomes this proposal.

- d. Licensing authorities have the discretion to apply existing licence conditions to a TEN?**

The Council welcomes this proposal. Although disturbance from events with the benefit of a TEN have been rare, there is no action that the licensing authority can take to control the activities provided and problems can continue unabated for up to the 96 hours provided for in the TEN. Similarly previous problems cannot be taken into account when processing a new TEN from the same person for the same activities at the same site and unless the Police take action, the licensing authority is powerless to act to protect a local community.

Care is required however not to make the process too onerous for the many community groups that require a TEN for a local event or to impose additional costs on licensing authorities that are not met by the £21 fee.

**Consultation Question 20: What would be the consequences of:**

- a) Reducing the number of TENs that can be applied for by a personal licence holder to 12 per year?**

Many TENs are obtained by existing premises licence holders to provide outside bars in village halls and local community events. The restriction proposed could result in members of the public encountering problems in obtaining external bars for their events. The Council therefore does not see a problem with the existing limit.

**b) Restricting the number of TENs that could be applied for in the same vicinity (e.g. a field)?**

The change proposed is long overdue. The inadequate definition of premises or place enables an enterprising promoter to submit several TENs for parts of a field or marquee which the licensing authority is powerless to resist. In addition, as the TEN only relates the premises in which the licensable activity is taking place, there would be nothing to prevent a TEN being submitted for a marquee with a capacity of 500 but for several thousand other people to be outside the marquee consuming alcohol that they had purchased in the marquee. As consumption of alcohol is not an offence and as long as no more than 500 people were present in the marquee, the event itself would be considerably larger than parliament had intended in the Licensing Act.

**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?**

A minimum figure of 168 hours might have an unduly adverse effect on a local community that relies on that premises as the principal or only retail outlet in that area. This could potentially cause hardship to the elderly in that community or those who are without transport, especially if there is an inadequate bus service to a town nearby.

It would be preferable for 168 hours to be the maximum period for a closure order and for the other remedies such as a suspension of a premises licence to be used that would not penalise those who rely on the other goods provided by that outlet.

**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 answer to question 21.

**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?**

The Council is of the view that a review of a premises licence should be an automatic consequence of a conviction for persistently selling alcohol to children.

**Consultation Question 24: For the purpose of this consultation we are interested in expert views on the following. Please give your views in the box below each point.**

**a. Simple and effective ways to define the 'cost' of alcohol**

The Council is not convinced that minimum pricing will prevent people from drinking irresponsibly. What is needed is a change of attitude on the part of those who adopt this practice and a zero tolerance to the anti-social

behaviour by young people who consume alcohol in public places. Unless the Government has statistics to show that the high price of tobacco has reduced smoking, it is unlikely that an increase in the cost of alcohol will similarly curtail alcohol consumption.

**b. Effective ways to enforce a ban on below cost selling and their costs**

The consultation paper does not suggest who would be responsible for enforcing the ban or who would meet the costs involved. This could be as difficult to manage effectively as to deal with the problems of under-age drinking in public.

**c. The feasibility of using the Mandatory Code of Practice (Mandatory Licensing Conditions) Order 2010 to set a licence condition that no sale can be below cost, without defining cost.**

The Council suggests that this would be difficult to enforce.

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

Yes. Licensing authorities should have greater discretion to meet their costs in administering their responsibilities under the Licensing Act. Some fees are artificially low, the fee for a personal licence valid for 10 years at £37 for example being only £1 higher than the charge for the CRB check that accompanies the initial application.

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

This is a long needed amendment. The costs involved in pursuing an unpaid annual fee can exceed the value of the fee itself. The simple solution and which is unavoidable on the part of the licence holder is to enable the licensing authority to revoke the licence for non payment.

**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?**

The mandatory conditions have not made any noticeable impression to the knowledge of the Council since they were introduced, although it is perhaps too early to draw a conclusion from their implementation.

**Consultation Question 28: Would you support the repeal of any or all of the mandatory conditions?**

The Council would support the retention of the age verification policy, although the other mandatory conditions are largely superfluous and likely to be difficult to enforce.

**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 Council would welcome the removal of the need to review the statement of licensing policy every three years which attracts little response from the public consultation and is time consuming for little added benefit.

The current application forms are confusing and repetitious and should be simplified.