

Proposed responses consultation questions

A list of the consultation questions included in this document is below.

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

The Licensing Authority acts in a quasi judicial manner and it should be impartial when making decisions. If it is made a responsible authority for the purpose of the Act then there may be the appearance of bias in decisions. – Members supporting officers. However, there is a case for involving the licensing authority in a limited way as outlined in reply to question no. 3.

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

The members sometimes wish to impose a condition that is desirable but not necessary to promote the licensing objectives. The reason may be their knowledge of the area. The burden of proof should be reduced to allow this, say for example “balance of probabilities”.

- **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 officers processing the licensing applications should be able to make amendments to the licensing applications where the suggested conditions included in the operating schedule of application are too vague to be enforced or it is considered desirable that they should be more restrictive. In cases where there is no challenge the officers issue the licence. Potential objectors may not have commented as they may not realise the difficulty in enforcing a vague condition. The Licensing Authority should be able to negotiate better wording and if not agreed, refer the condition to the relevant licensing committee. The definition of interested parties could also be extended to cover those indirectly effected by the granting of a licence, e.g. residents living near to transport hubs serving a particular premises

- **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 members usually take this position. However, the purpose of a hearing is to review the evidence. If the Authority must accept the police recommendations then this would remove the reason for the hearing. The Authority looks at the wider issues such as the impact on the economy of the area.

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

Options could include direct mailing of the local community rather than relying solely on boundary notices, extending even to consultation groups and open days. However, this is resource intensive for local authorities and therefore perhaps the burden could be shifted to the applicant with them having to demonstrate that the widest possible consultation had been undertaken as part of their application.

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

It could be positive provide that the representations were relevant and steps taken to avoid the involvement of special interest groups who may lodge objections although the licence would not affect it or their members.

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

The licensing process may become entrenched in debate on the health issues of alcohol which is not its intended process. This should be dealt with at government policy level.

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

Provided this is handled sensibly there could be benefit. The evidence of the adverse affects of excessive alcohol are well documented, with the NHS meeting the costs. However, the difficulty lies in how to take this into account when dealing with an individual premises, although it would be possible to impose conditions relating to cheap alcohol offers etc. The difficulty lies in that unless such conditions are universally applied, the users of licensed premises will simply shift their allegiance to other premises where less restrictive conditions apply.

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

This could be positive provided that the range of interested parties was not too wide. It might be difficult to decide which groups to include and the authority may be in danger of excluding some people unintentionally leading to appeals.

- **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?

Unless the proposal has not been understood it is difficult to see how this streamlines the appeals process. The magistrates would still have to hear the evidence and reach a decision to remit the case back to the Local Authority. This would mean that there is little saving of the Court's time, other than not having to go through the Licensing Authorities policies etc in detail.. Unless the remit back to the Authority is without specific instructions, the Licensing Committee would be obliged to follow the court's recommendation or face costs awards against it on subsequent appeals. This means that the Authority would not be retaining any power but would add a stage to the bureaucracy.

- **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.

There is a delay in obtaining a date for a hearing and so it would be an advantage if it took place immediately and it would deter frivolous appeals. However, it is important that any such change does not provide that the Authority would have to pay compensation or costs if its decision were subsequently to be overturned. This would likely to discourage the Authority from making difficult judgements due to the risk of future financial penalty.

- **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 have no experience of the use of Early Morning Restriction Orders, but there is a potential benefit of extending flexible control as another means to ensure licences are fit for purpose for the character of a local area.

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

No concerns. The process is too unwieldy and costly. Sufficient Legislation already exists.

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

We have no experience of the use of CIP, but I can see the potential benefit of extending the ability of residents to express concerns, as another means to ensure licences are fit for purpose for the character of a local area.

• **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?

Agree in principle with this idea to impose late night levy and LA being provided with discretion to decide on levy and at what time the levy should apply.

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

Yes – this would promote self-regulation and good management.

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

Yes – as this would attach a cost to the opening times and issues that cause residents most concern. Cost may lead to a limited supply of appropriate late night venues.

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

Yes – In line with “localism”, allowing people who live in the area and understand the character of the area more chance of imposing the right opening hours on premises based on the specific character of the vicinity rather than national policy.

• **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?

This would allow objections on grounds of public nuisance and in many cases attract additional conditions being imposed

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

Why only 5 days? If a full consideration required and negotiation with applicant, administration of process alone difficult to complete in 5 days. 10 days suggested as a minimum.

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

Agree

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

Agree – this would deter TEN proceedings being seen as a means to avoid important conditions

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

- a. Agreed, since this would stop present abuses of the system
- b. Similarly agreed

• **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?

Whatever limit is chosen it will still appear somewhat arbitrary. However, a lower limit of 7 and an upper limit of 14 appears reasonable

• **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 impact would be positive and send a very strong message around the illegality of selling alcohol to minors. It would hopefully decrease the amount of underage sales

• **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.

See comments to question 8 regarding the need for standards to be nationally applied

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

The local tax payer should not be expected to subsidise the local licensing system, and the licence fees should reflect the full costs of administering the process. This will encourage applicants to consider all the financial consequences of licence application and will properly fund licensing authorities. This would mean that the regulation and enforcement of the conditions in the area would be improved.

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

Yes. This would save the Authority time and money

• **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?

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

No. They are useful tools for helping people understand/limit the amount they drink.

• **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?

No. Although a large proportion of the trade act responsibly there are still those who do not. Licensing in general and the sale of alcohol in particular has a wide reaching effect on society, from a personal health perspective to the social consequences of anti social behaviour and worse. It is essential that these activities are strictly controlled. Experience has shown that this is what local people want and that they also want that control to be exercised at a local level.

Residents should be informed if a premises has a late licence if it effects their lives (ie noise at night)