

LICENSING COMMITTEE: 11 January 2011

Report of the Chief Strategic Planning and Environment Officer

GOVERNMENT RESPONSE – REBALANCING THE LICENSING ACT.

1. Background

1.1 The Government as part of its Coalition Agreement has set out a programme of reform around alcohol licensing to tackle the crime and anti-social behaviour associated with binge drinking in the night-time economy. In particular, the Government set out the following five commitments which state.

- We will overhaul the Licensing Act to give local authorities and the police much stronger powers to remove licences from, or refuse to grant licences to, any premises that are causing problems.
- We will allow councils and the police to shut down permanently any shop or bar found to be persistently selling alcohol to children.
- We will double the maximum fine for underage alcohol sales to £20,000.
- We will permit local councils to charge more for late-night licences to pay for additional policing.
- We will ban the sale of alcohol below cost price.

1.2 To take this forward, on 28 July 2010 the Home Office published a consultation entitled "Rebalancing the Licensing Act a consultation on empowering individuals, families and local communities to shape and determine local licensing". The Committee agreed a response, broadly welcoming the proposals, at its meeting of 7 September 2010.

1.3 On 30 November 2010 the Home Office published a response to the representations received on the consultation document. The report is to provide details of the response. The government's intention is to action the planned responses by using the Police Reform and Social Responsibility Bill, which was presented to Parliament on 30 November 2010 for first reading. Part 2 of the Bill deals with licensing matters.

2. Details of the Governments Response following Consultation on its Proposals.

2.1 In order to meet its Coalition Commitments the government made a number of proposals in its consultation document and has considered the feedback received in preparing its response. Details of the responses are given below.

Proposal	Response.
<i>Giving more Local Powers to Refuse and Revoke Licences.</i>	
Give licensing authorities the power to refuse licensing applications or call for a licensing review without requiring relevant representations from a responsible authority.	Confirmed.
Remove the need for licensing authorities to demonstrate their decisions on licences "are necessary" for (rather than of benefit to) the promotion of the licensing objectives.	Confirmed, the evidential test will be that the decisions are "appropriate" rather than necessary.
Reduce the evidential burden of proof required by licensing authorities in making decisions on licence applications and reviews.	Despite the lowering of the evidential burden licensing authorities will still be required to ensure the decision is evidence based and linked to the licensing objectives.
Increase the opportunities for local residents or their representative groups to be involved in licensing decisions without regard to their immediate proximity to premises.	Any person, body or business will be able to make representations regardless of where they live. The advertising arrangements will be altered to more effectively bring the application to the attention of persons likely to be effected by it.
	The statutory guidance will be amended to require applicants to take additional steps to show they have given appropriate consideration to the interests of local communities.
Enable more involvement of local health bodies in licensing decisions by designating health bodies as a responsible authority and seeking views on making health a licensing objective.	Local Health Boards will be designated as Responsible Authorities. It is not intended to legislate to add health as a licensing objective – the issue will be considered with wider considerations of tackling alcohol related harm.
Amend the process of appeal to avoid the costly practise of rehearing licensing decisions.	Will not be taken forward.
Increase the weight licensing authorities will have to give to relevant representations and objection notices from	Statutory Guidance will be amended to make clear to licensing authorities that there should be a

the Police.	presumption that all reasonable recommendations from the police should be accepted unless there is clear evidence to the contrary.
<i>Dealing with the Problems of Late Night Drinking.</i>	
Introduction of a Late-night levy to pay for late-night policing.	Powers will be given to licensing authorities to introduce a late-night levy to pay for policing the night time economy. The levy will be set to a national level, charged annually and apply to all premises selling alcohol during the prescribed periods.
Enable licensing authorities to have flexibility in restricting or extending opening hours to reflect community concerns or preferences.	Early morning restriction hours will be extended to enable them to be applied flexibly for any period between midnight and 06.00 hours. Licensing authorities will be able to impose fixed and staggered closing hours and zoning.
Repeal the unpopular power to establish Alcohol Disorder Zones and allowing licensing authorities to use a simple adjustment to the existing fee system to pay for any additional policing needed during late-night opening.	Confirmed
Simplify Cumulative Impact Policies to allow licensing authorities to have more control over outlet density.	Statutory guidance will be amended to allow greater control for licensing authorities.
<i>Protecting Children from the Harm of Alcohol</i>	
Introduce tougher sentences for persistent underage sales.	The maximum fine for persistent underage sales will be doubled and the minimum period of voluntary closure that can given for persistent underage sales extended from a maximum of 48 hours to a minimum closure period of 48 hours and maximum closure period of 14 days.
Trigger automatic licensing reviews following persistent underage sales	The statutory guidance will be amended to ensure that the presumption will be that licensing authorities will revoke the licence.

<i>Banning Below Cost Sales.</i>	
Ban the sale of alcohol below cost price.	The responses to the consultation document did not identify a consensus view and the government will therefore give the matter further consideration.
<i>Reducing the Burden and Bureaucracy of Licensing and Covering its Costs.</i>	
Enable licensing authorities to revoke licences due to non payment of fees.	Licensing authorities will be able to suspend licences due to non-payment of fees.
Change the requirement in respect of the review of Statements of Licensing Policy.	Licensing authorities will be required to publish their policy every five years rather than every three.
Consult on the impact of the Mandatory Licensing Conditions Order and whether the current conditions should be removed.	The mandatory code will not be removed but will be subject to a review in 12 months.
Enable local authorities to increase licensing costs so that they are based on full cost.	The government have indicated in their response that they intend to enable licensing authorities to set licensing fees based on full cost recovery.

2.2 The consultation document also requested feedback on the issue of Temporary Event Notices (TEN's) the proposal about which were to substantial overhaul of the system to give the police more time to object, enable all responsible authorities to object, increase the notification period and reduce the number that can be applied for by personal licence. In its response to the feedback the government has indicated that the following actions are to be undertaken.

- The environmental health authority will be able to object to a TEN as well as the Police.
- The police and environmental health officers may object to a TEN on the basis of all of the licensing objectives, rather than just the prevention of crime and disorder.
- The time allowed for the police and environmental health officers to object to a TEN will be extended to three working days (from the current two) rather than the five days proposed in the consultation document.
- The consultation document suggested that the notification period in advance of the event should be extended from the current requirement to give ten days, this has not been adopted.
- It is intended to give licensing authorities discretion to apply existing Premises Licence conditions to a TEN as an alternative to issuing a counter notice.

- It is intended to allow TENs to be given to licensing authorities with less than 10 working days notice, but at least 5 working days before the event. There will be an annual cap on the number of late TENs permitted, personal licence holders will be allowed a maximum of 10 a year and non personal licence holders allowed a maximum of 2 a year.
- The period for which a Temporary Event Notice may cover is to be extended from 96 hours to 168 hours (4 to 7 days).
- The maximum number of days permitted for events at any place has been extended from 15 to 21 days per year.

2.3 There are also to be proposals to add additional offences which are considered relevant for Personal Licence holders and should be taken into consideration by the Police when determining an applicants suitability to hold a licence. The new offences now include:

- Road Traffic Act 1988, Section 6(6) (Failing to co-operate with a preliminary test)
- An offence under section 1 of the Criminal Attempts Act 1981 of attempting to commit an offence that is a relevant offence
- An offence under section 1 of the Criminal Law Act 1977 of conspiracy to commit an offence that is a relevant offence
- The offence at common law of conspiracy to defraud

2.4 The consultation document raised the issue of banning below cost sales in the interests of preventing the harm caused by alcohol abuse. The government advise that responses have indicated a wide range of views on the subject with no overall consensus. Many respondents raised issues of commercial confidentiality and the feasibility of enforcing a ban which did not contain a clear and simple definition of cost. While the government remain committed to taking forward proposals to implement the ban on sales below cost without delay, this will not form part of the Police Reform and Social Responsibility Bill.

2.5 The Secretary of State will be required to review the amendments and present a report to Parliament on the effects after a period of five years.

3. Late Night Levy.

3.1 The Home Office have indicated that they intend to permit licensing authorities to raise funds through a late-night levy to tackle alcohol related problems occurring in the early hours between midnight and 06.00 hours. The levy will apply to all premises authorised to sell alcohol within the boundaries of the authority during a specified time.

3.2 The details of the levy will be provided through secondary legislation but will essentially allow the authority to make an annual charge on the holders of

Premises Licences to raise funds to assist in policing late night alcohol related problems. If the authority were to decide that a late night levy is to apply to its area it must also determine:

- The late night supply period, premises operating during these times will be required to pay the levy.
 - Any permitted exemption categories
 - Any permitted reduction categories
 - The proportion of the net amount that is to be paid to the police
- 3.3 It will subsequently be possible for the authority to amend or vary the late-night levy requirements. The procedure to follow will be laid down in regulation however it will involve consultation with interested parties, publication of the proposals and provision for Premises Licence holders to vary their authorisations so as to be outside the late night supply period.
- 3.4 The amount of the levy will be set nationally and will be subject to certain categories of exemptions and it will be possible for the authority to discount the fee at its discretion. Where the fee is not paid the licence may be suspended. The total amount recovered through the levy, less any permitted expense of collecting the money, may be paid partly to the local policing body and partly to the bodies authorised by Regulation. At least 70% must be paid to the Police.

4. Achievability

This report contains no equality, personnel or property implications.

5. Legal Implications

- 5.1 The Government is proposing to make amendments to the legislation which will undoubtedly strengthen the legal position of licensing authorities.

6. Financial Implications.

- 6.1 The licensing service is required to be self financing with all expenditure being met from fees and charges which are reviewed annually. However, the Licensing Act fees are set by the government nationally and the authority therefore has no power to change them. In the previous year the cost of providing the licensing service has been greater than the level of fees received.
- 6.2 The Government acknowledges in its document that its proposals will increase the burden on local licensing authorities and it is likely that there will be a need to increase licensing service staff to cope with the demand for the service although

as this stage it is not possible to estimate the need for increased resources. The intention expressed in the governments response is to enable local authorities to increase licence fees based on a full cost recovery is therefore welcome.

- 6.3 Following the implementation of the proposed changes to the Licencing Act the Council will need to consider carefully the financial implications of the additional licensing service staff required as the amount of the levy will be set nationally and at least 70% will be payable to the Police.
- 6.4 The Licensing Act provides for annual fees to finance provision of the licensing service however the non payment of the fee is only recoverable as a debt. The proposal to enable licensing authorities to suspend licences for non payment would greatly increase the effectiveness of the cost recovery process. The additional burden of processing licence revocations would be financed by the more effective collection of licensing income.

7. Recommendation

- 7.1 It is recommended that the report be noted.

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This report has been prepared in accordance with procedures approved by Corporate Managers.

Background Papers:

1. Report to the Licensing Committee of 7 September 2010 entitled "Government Consultation – Rebalancing the Licensing Act."