

Draft Licensing Act Policy Consultation Responses

Date	Source	Details of Representation	Response	Details of Amendment
12.11.2019	Building Control, Cardiff Council	No adverse comments from a Building Control perspective.	N/A	N/A
19.12.2019	Matthew Phipps, TLT Solicitors	<p>Point 1. Prevention of Crime and Disorder.</p> <p>The prevention of crime and disorder is a major pillar of licensing legislation and one of two objectives, along with prevention of public nuisance, that drives the majority of representations to applications and reviews. However, we have become increasingly concerned that licensed premises are sometimes being unfairly held to a higher standard when it comes to prevention of crime and disorder than other public premises. Because premises undertaking licensable activities require a licence, this is often used to drive premises licence holders to accept conditions on their licence that have associated costs other premises would not be required to meet. Because breaches of condition can lead to prosecution or review of the licence, such conditions force costs onto premises that often can play a part in perfectly good businesses folding. Bricks and mortar businesses are already under severe financial pressures from minimum wage, rates and other levies, so these costs that may appear small when imposed can be the tipping point as to whether a business can survive or not. For instance, the approximate cost for hiring two door supervisors for four hours on a Friday and Saturday night alone per annum is around £14,000.</p> <p>It would we believe assist if the policy could expressly set out what it expects in terms of evidence from police or other officers when bringing a review or objecting to a premises licence. When Police present evidence of crime and disorder in relation to licensed premises, they will often include references to any crime that is associated not just with the premises in terms of its operation as licensed premises but generally. For instance, the Police will often include reference to all calls where those calls have referenced the premises as a local landmark which can include anything from criminal activity from people who have not been customers of the premises, offences in relation to taxis or queues, or general disturbance and noise nuisance where it cannot be said to be relevant to the premises.</p> <p>Premises licence holders can also often find reference to offences that are not relevant to the licensing objectives themselves.</p> <p>We feel it is important that the council recognise this in their policy.</p>	<p>Agree to include that evidence submitted in support of representations should be specific.</p> <p>ft</p>	<p>Policy amended to include that it is expected by the Licensing Authority that any evidence submitted in support of representations should be specific.</p>

	<p><u>We propose that the policy states that the council's expectation is that evidence brought by the police or other responsible authorities/ other persons relating to the prevention of crime and disorder licensing objective will directly relate to the licensable activities being provided within or immediately without the premises themselves.</u></p> <p>Point 2. Prevention of Public Nuisance</p> <p>The prevention of public nuisance licensing objective is to be widely interpreted. The S182 Statutory Guidance requires this. However, we often come across conditions on premises licences that reference 'nuisance', rather than 'public nuisance'. This sets a significantly higher barrier-one that was not intended by the Licensing Legislation. It should be recognised in the policy that this goes beyond that which was intended by Parliament.</p> <p><u>We propose that the policy reflects the need for public nuisance to be demonstrated and for conditions relating to nuisance to relate to public nuisance rather than any wider definition. In particular, we suggest that expressly stating that private nuisance is not a licensing objective would assist in all parties understanding what is and is not the remit of licensing legislation.</u></p> <p>Point 3. Protection of children from harm</p> <p>Since the current policy came into force, a mandatory condition has been added to all premises licences permitting sales of alcohol requiring the premises licence holder to implement a policy to prevent underage sales of alcohol and for the DPS to implement that policy.</p> <p>We note that some responsible authorities request 'Challenge 25' as a condition. Many premises (especially multiple operators) operate Challenge 21 policies throughout their estates and have training and signage prepared for this. To change it can be expensive and/ or time consuming. Absent any failings by the premises or business it's difficult to understand the legitimacy of any such request / obligation.</p> <p><u>We propose that the policy states that if an applicant expresses a preference for a particular 'challenge policy', be it 'Challenge 21 or Challenge 25', this should not be objected to unless there is good reason, backed by evidence, to do so.</u></p> <p>Point 4. Cumulative Impact</p> <p>Cumulative impact has been brought onto a statutory footing since the current policy was last revised. In particular the law requires licensing authorities to undertake cumulative impact assessments ('CIA's') once every three years.</p>	<p>Disagree.</p> <p>The intention is not to go into too much intricate detail as it risks confusing matters. Representations in any case will only be accepted if they are 'relevant'.</p> <p>Disagree.</p> <p>Each application to be judged on its own merits which the policy already reflects.</p> <p>Disagree.</p> <p>It is considered that the Licensing Authority has received satisfactory evidence demonstrating</p>	<p>N/A</p> <p>N/A</p> <p>N/A</p>
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	<p>We note that your cumulative impact policy section references cumulative impact assessments ('CIA's') . We believe that in light of the new assessments, the policy areas should be more thoroughly reviewed. A long list of incidents and issues within a large city centre location is not to our mind sufficient to allow the conclusion that the whole of the city centre is so saturated by licensed premises that applications for new licences should be presumed to be refused.</p> <p>We understand that there are occasions where CIA's provide a valuable tool to licensing authorities in regulating the night time economy. However, our experience is that they can also be an impediment to businesses and the development of a thriving economy. We have represented a number of potential operators who have wanted to open premises who have decided not to go ahead once the likely consequences of the policy are explained to them. This has included innovative small business operators looking to open their first premises, as well as more established operators. The effect can be that premises in the city centre remain boarded up when they could be otherwise occupied and benefiting the city as a whole.</p> <p>For this reason, cumulative impact unintentionally penalises operators considering smaller more novel applications (simply because of the prohibitive cost), perhaps resulting in them looking to take their ideas elsewhere and thereby wasting a chance to develop a more rounded and vibrant economy in those areas of the city.</p> <p>And if applications proceed they are more often than not by well-funded national operators, who can fund the legal hurdles that the policy imposes, perhaps inadvertently undermining the Councils stated aim of introducing a diverse range of premises within the city centre. Put another way, such policies also promote ubiquity and stagnation as the only operators willing to take on the risk and outlay of applying in cumulative impact zones are larger established chains with the financial backing to fight for a licence. On occasion, operators will accept licences, or have licences imposed upon them, that prove to be unworkable, simply to be able to have the chance to trade. This again promotes a kind of ubiquity.</p> <p>Officers adopting a risk adverse, worst case scenario approach to new innovative applications, invites committees to impose conditions that generate an unnecessarily burdensome licence, based not on the principles that the legislation purports to advocate.</p> <p>Given the plight of the casual dining market in recent times, evidenced by the spate of closures across Cardiff from local and national operators alike, this is an issue that needs to be taken seriously. It can be forcefully argued that they failed in part because their offers were unable to adapt as the market developed around them, because the conditions on their licence prohibited it and</p>	<p>that the cumulative impact of licensed premises selling alcohol and providing late night refreshment in the City Centre (see map) is undermining the promotion of the licensing objectives; prevention of crime and disorder, prevention of public nuisance and public safety.</p> <p>The evidence and CIA will however continue to be reviewed every three years and where necessary changes will be made.</p>	
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	<p>of someone else's data, there are other effects that need to be reflected in licensing policy.</p> <p>For instance, the requirement for CCTV at a premises licence is not only expensive to install, but we question the value of such systems in terms of crime prevention and detection, especially in smaller restaurants and event spaces. However, it is now commonplace, if not automatic, for police to demand CCTV in almost all premises and to insist upon complicated and demanding CCTV conditions to be added to premises licences. In addition, operators of CCTV systems have to consider the GDPR implications. In particular, anyone who stores data, including CCTV footage of individuals, which is classed as data for the purposes of GDPR, must be responsible for its safe collection, storage, usage and disposal. Handing over CCTV footage to Police officers in the active investigation of a criminal offence, such as a fight, would obviously be a legitimate reason for providing data. However, a condition with a general requirement to hand over CCTV at the behest of a licensing officer or police officer arguably breaches GDPR, were it to be enforced. This means that there are numerous CCTV conditions on licences that would likely, were one to try and enforce them as they are written, cause an operator to breach GDPR. But if the licence holder falls back on GDPR they are equally likely to find themselves in an enforcement dialogue with officers, potentially in violation.</p> <p>Similarly, club scan conditions need to be thought about in terms of GDPR and the obligations of the data holder. For instance, the time for which any data is stored and the purpose for storing that data needs to be made clear to people handing over their data. Again conditions that require such data to be handed over at the behest of an officer other than in investigating a criminal offence would in all likelihood breach GDPR.</p> <p>Storage of details about customers, CCTV, Door staff sign in books even lavatory checks for months even years seem contrary to GDPR minimisation principles and are frankly difficult to understand from a licensing objectives perspective, but notwithstanding that they are still the subject of officer request and or conditions imposed by the authority.</p> <p>We feel therefore that this need to be addressed in the policy in order to ensure that conditions are updated to ensure compliance and that CCTV in particular is not being universally required where there is no real and pressing need for it.</p> <p><u>We propose that GDPR is expressly dealt with in the policy to ensure that all parties understand that any conditions need to comply with GDPR and any evidence submitted to the local authority to be included in the public documents must likewise comply.</u></p>	<p>that the policy could go further and advise that consideration should also be given to complying with data protection legislation when formulating conditions in support of a representation or an application.</p> <p>In relation to the comment about evidence to be included in the public document being compliant with GDPR – the local authority will not publish anything that breaches GDPR.</p>	
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	<p>Point 11. Agent of Change</p> <p>In recent years, Cardiff, as with many other cities and towns across the UK, has lost venues providing music and dancing to its citizens. A lot of this can be attributed to the development of the City, with some of it directly resulting from residential properties being built in the immediate vicinity of these premises, often without adequate noise protection for the residents. This development should not, however, lead to the venue being required to implement expensive works to ensure their survival. We act for clients who have very genuine concerns that their premises are likely to fall victim of this on-going drive to build residential property without proper care and attention being paid to the diverse mix of licensed premises that make Cardiff the unique creative hub it is recognised as being worldwide.</p> <p>Whilst we recognise that the principle is currently being debated in terms of planning, it is equally as important in licensing. We recommend that the licensing policy expressly recognises that developers of new residential developments need to protect their buyers from potential sources of noise disturbance, not expect existing licensed premises to have to adapt their offer to accommodate the new development. In particular, smaller venues often rely on live or recorded music, provision of social events and other community based promotions, such as beer festivals, in order to survive and thrive. Such premises remain under threat and often cannot afford to fight review proceedings.</p> <p>We have, unfortunately, seen a rise in complaints and reviews directed at existing premises that have often been at the heart of the communities, from residents moving into new properties nearby. Whilst it is incumbent upon licence holders to promote the licensing objectives, it is iniquitous and arguably a breach of their Article 1, Protocol 1 human right to peaceful enjoyment of property, which includes their premises licence, to have their livelihood threatened and sometimes taken away because of poorly designed and constructed residential property built next door.</p> <p><u>We therefore propose that the Agent of Change Principle is adopted into the licensing policy to ensure that where reviews are sought by residents or responsible authorities in relation to public nuisance alleged to arise from a licensed premises, the nature of the premises, it's track record and length of time it has been providing the activities complained of will all be taken into account in determining the matter</u></p>	<p>Disagree.</p> <p>The Licensing Authority does not determine whether residential properties are built in the vicinity of licensed premises (this is a matter for planning).</p> <p>If this were to happen and the licensing objectives undermined by a licensed premises then the Licensing Authority along with the other Responsible Authorities would investigate as necessary. Whether the premises was there first or not the licensing objectives should not be undermined.</p>	<p>N/A.</p>
	<p>Point 12. Large scale events</p> <p>Cardiff is blessed with significant green spaces in its various parks and gardens. These have increasingly</p>	<p>Disagree.</p>	<p>N/A</p>

		<p>been the subject of premises licence applications to permit, amongst other matters, large music based concerts or events.</p> <p>There is an opportunity here, which the current draft of the licensing policy, respectfully, misses, to set out the basis on which the authority expect applications to be made. A number of licensing authorities now provide detail about the dialogue and discussions that they anticipate premises licence holders and/or applicants undertaking prior to events with larger capacities. Whilst there may not be any necessity for there to be extensive commentary about the framework for, say events attracting 500 people or fewer, if events are to attract a capacity of some thousand(s) it would undoubtedly be helpful to residents, officers and applicants to clearly identify a model approach to applications of this sort.</p> <p>Particular licensing policies, such as the Mendip Authority which is home to the Glastonbury Music and Arts Festival have extensive commentary about how they believe the framework under which these applications should be made and considered as well as the basis on which the events could and should be conducted.</p> <p>The proposed paragraph 3.4 provides little or no direction save for a steer toward early dialogue and we would suggest that more could and should be done here.</p> <p>Point 13. Making representations 4.6.</p> <p>Whilst the text here is all perfectly legitimate and technically correct we would respectfully suggest that enlarging these paragraphs to explain to residents how they could and should serve representations to set out not just what the licensing objectives, are but to contextualise the objectives and to explain, perhaps what issues are not of legitimate concern, (house prices etc.) would enhance the value that the licensing policy offers.</p> <p>Point 14. Conditions. 5.2</p> <p>Some of the responsible authorities request conditions that are if not standard and certainly reasonably generic and/or common place. We can think of little or no matters in the last 3 years in which we have been involved where the police have not requested a comprehensive “all singing, all dancing” CCTV system.</p> <p>Increasingly the we note that even for premises that do not sell alcohol, conditions are requested obliging mobile security officer cameras to be worn by SIA registered door staff.</p>	<p>The policy advises applicants of the Events Liaison Panel and recommends that applicants get in contact at the earliest opportunity so the event can be considered by the panel. There is no set time scales however it is recommended that applicants contact the relevant departments and authorities as early as possible; this is already reflected in the policy.</p> <p>Agree.</p> <p>Disagree.</p> <p>The paragraph already states that conditions should be tailored to individual premises and it goes on to detail considerations for responsible authorities when</p>	<p>Policy amended to include examples of what cannot be taken into consideration.</p> <p>Formatting also amended to make text stand out.</p> <p>N/A</p>
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	<p>Any reading of the Information Commissioner guidance and advice would make it clear, we suggest, that CCTV is not meant to be a standard practice common to all licensed premises irrespective of their perceived risk, customer profile, engagement with alcohol etc.</p> <p>We would respectfully suggest that paragraph 5.2 would be significantly enhanced by precisely setting out the basis on which the authority considers it to be appropriate legitimate reasonable and balanced for such conditions to be attached.</p> <p>And we would further invite the policy to remind responsible authorities of the onerous nature of some their requirements.</p> <p>Whilst of course it is true that licence holders and applicants need not necessarily accept the proposals from the responsible authorities, it is undoubtedly the case that smaller less well-resourced owner operator applicants, often feel pressurised into accepting the (we would respectfully suggest disproportionate and inappropriate) representations from officers.</p> <p>Not only are owner operators unlikely to want to challenge the police and others there is almost inevitably a significant financial burden in not accepting representing and proceeding to a contested licensing hearing, over and above any, quite natural, anxieties associated with challenging robust officers in the first place.</p> <p>Whilst it is perfectly understood that the licensing policy will in significant part set out what is and is not acceptable from a licence holder or applicant perspective, this paragraph offers an opportunity to remind officers of their responsibilities, the national guidance and the framework under which Cardiff will come to consider their proposals.</p> <p>Whilst we welcome the developed policy (page 26 of 68), particularly the sense that prior to the service of an application for review, a dialogue is to be encouraged, the phrase <i>“to establish whether a satisfactory resolution could be met”</i> could perhaps be developed and/or improved. We would respectfully suggest that an open and transparent enforcement protocol, one that encourages enforcement officers to clearly set out their concerns, that offers licence holders the opportunity to improve, that offers licence holders the opportunity to evidence that improvement and one which gives them sufficient time and space in order to show change of procedures and approaches have been successful, could and should be the articulated point here. Reference to the Regulator's code- including a link to it (https://www.gov.uk/government/publications/regulators-code)- should also be considered.</p>	<p>drafting conditions i.e. costs.</p> <p>Agree to include reference to the current enforcement policy and provide link to where it can be found.</p> <p>Regulator's code is already referenced in the policy – agree to include link.</p>	<p>Policy amended to include reference to the current enforcement policy and provide link to it.</p> <p>Link provided to the Regulator's code.</p>
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		<p>premises into five or six different types of operation is impossible. Within each categorisation and definition significant, profound even, differences will attach.</p> <p>By way of brief example evidence has been produced to the licensing committee in recent months and years that disclosed a wildly different crime and incident profile for last night refreshment premises, within 5 minutes walking distance from one another. Some such premises have 10 times the amount of incidents, crimes and anti-social behaviour concerns as opposed to others but the policy seeks to categorise the premises as though they were "all one". Whilst (see comments about environmental health proposal to close outside areas at 9pm) may legitimately give an indication as to the concerns fairly articulated by the authority, much greater effort should be made in the policy to explain to applicants, responsible authorities and the councillors, that not all premises with similar characteristics are necessarily similar in their effect on the licensing objectives.</p>	<p>clear on what it is trying to encourage and discourage. Each application will of course be judged on its own merits and there have been many examples of applications falling within the CIA which have been granted despite relevant representations being received – it is not a blanket ban.</p>	
23.12.2019	Carl Ryan	<p>Having been a licensee in Cardiff for more than fifteen years, and with the experience of many licensing applications, I strongly believe the evidence which formulates the policy is unreliable and non-specific. I really cannot stress enough, I think the evidence needs to be properly checked and verified for accuracy, so as not to undermine the policy.</p> <p>For instance, Last Drink Data and information from A&E or the Alcohol Treatment Centre cannot be deemed reliable as it is usually collected from people that are intoxicated. Even if taken at face value, there is nothing in the stats to suggest that the person has become intoxicated at a particular premises, or indeed any premises at all. An individual could have been pre-drinking at home, got refused entry at one premises in town, and that would lead to a black mark against that venue.</p> <p>It is difficult to link crime and disorder on the public highway to a particular licensed premises or specific type of licenced premises due to the vast amount of variables. Furthermore, from past experience the 'crime' statistics provided by the police include allegations and many occurrences do not lead to conviction. I believe this is a crucial point because if you were to only factor in convicted crimes, the picture would be a lot different.</p> <p>Although a workable policy in theory the application of the Traffic Light System seems lacking. The policy states that "points are allocated as set out below" and in actual fact there is no further information, leading to a lack of transparency and an inability to question the application of points. The allocation of points is dependent upon data</p>	<p>Disagree.</p> <p>It should be noted that the health data is not used on its own but is used to corroborate the evidence from the Police data. The data gathered is from A&E and the use of A&E data along with Police data has been nationally recognised as a way of reducing violence within the night time economy.</p> <p>It is considered that the Licensing Authority has received satisfactory evidence demonstrating that the cumulative impact of licensed premises selling alcohol and</p>	N/A.

		<p>collated , again as discussed above can be open to variables and therefore unnecessarily punitive.</p> <p>If the evidence behind the CIP as it stands were to be challenged legally I feel it could bring the whole policy into question.</p>	<p>providing late night refreshment in the City Centre (see map) is undermining the promotion of the licensing objectives; prevention of crime and disorder, prevention of public nuisance and public safety.</p> <p>The evidence and CIA will however continue to be reviewed every three years and where necessary changes will be made.</p>	
23.12.2019	Fiona Kinghorn, Director of Public Health	<p>Point 1. Role and Function of Responsible Authorities</p> <p>The UHB is pleased to see that, as with the previous version of the policy, an explanation us given to the role of the UHB as a Responsible Authority. We would recommend a slight amendment to the below text (addition in bold) to inform the reader we consider the wider data when considering licence application.</p> <p>"The UHB have advised the Cardiff Council that they will use information from the UHB and wider sources including the Alcohol Treatment Centre and Emergency Department to monitor and inform the Licensing Authority of any activity that is causing concern and use the information to make representations where appropriate."</p> <p>Point 2. Alcohol Harm.</p> <p>Whilst alcohol harm and public health are not licensing objectives, it is important to recognise the impact on individuals and the wider community of alcohol use and misuse.</p> <p>Welsh Government's Substance Misuse Delivery Plan 2019-2022 prioritises the prevention of harm and states that: <i>"Substance misuse can cause a multitude of harms, both to the individual and to those who have direct or indirect or indirect contact with the person who is using substances, such as family members or society as a whole. These harms may consist of the deterioration of physical and mental health and consequent premature death, lack of employment, excessive gambling, loss of housing, the breakdown of family relationships, and adverse consequences on the wider community concerning criminal activity and anti-social behaviour."</i></p> <p>Excessive alcohol consumption is directly associated with a large number of health issues including high blood pressure, stroke, liver disease, cancers, pancreatitis and dementia. In Cardiff and the Vale UHB geography, the percentage of the population</p>	<p>Agree.</p> <p>Comments noted.</p>	<p>Amendment made.</p> <p>N/A.</p>

South Wales Police has provided statistical data that demonstrates that the City Centre area has high highest levels of crime and disorder, however the data does not distinguish alcohol related crime specifically (*These data should also be considered in the context of similar-sized towns and cities as with the Home Office 'Quanta' data wherein Cardiff consistently performs better than others*). It is often difficult to categorise alcohol-related crime as it may be recorded as a number of different offences such as anti-social behaviour, violent crime and public order offences. Furthermore an offence could be caused by offender who is drunk (who may not even be identified or caught for the offence) or it could be a victim of a crime has been targeted due to being in an intoxicated state

Have to take issue with the wide-ranging use of phrases such as “Despite this the data demonstrates that there are high levels of crime and disorder in the City Centre especially at night and on weekends when people are visiting the City Centre due to the night time economy and the presence of licensed premises” – *again, it seems to me, there is a lack of context (numbers of visitors, performance of other cities etc)*

Pub/bars/nightclubs Data from the ‘Report on Community Safety Issues With Cardiff City Centre During the Night Time Economy 2018/19’ (Detailed in Appendix A) collected to assist the formulation of this policy indicates that premises in the City Centre that serve alcohol (with or without ancillary entertainment) contribute to problems of alcohol related crime and disorder in the premises or in the surrounding streets as people leave. Whereas anti-social behaviour across Cardiff has decreased over the last 8 years , it has actually increased in the City Centre by 3.3% The main hotspot times for crime in the City Centre is Friday and Saturday evening until the early hours (4am/5am) of the next morning. It is therefore considered that premises offering later operating hours pose the biggest risk in terms of promoting the licensing objectives. *I would like to see the extent to which low-level, but nonetheless seriously distressing crime and disorder on the streets is caused by those hanging around doorways and in the streets. They are there throughout the day and night – abusing workers and visitors going about their lawful business and causing a mess which, if anyone else did the same, would lead to (likely) arrest and prosecution. Yet council workers and others seem unable to deal with the detritus left by a seemingly ‘untouchable’ clique’*

Streets within the City Centre with relatively lower numbers of licensed premises such as Queen Street and The Friary still have high crime figures that demonstrate the cumulative impact of the licensed premises in the City Centre area. *It seems that ‘relatively’ may be used by the draft report to point-up a negative about the night-time economy – however I don’t see it being used in some of the contexts I have highlighted above*

