

Appendix 2

Wiltshire Council's response to Rebalancing the Licensing Act - Consultation

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

Under the existing legislation the licensing authority's role is impartial. We advise the applicant and any interested parties/responsible authorities. If the licensing authority became a responsible authority it remove this impartiality, and the likely impact would be an increase in the workload of both licensing officers (commenting on applications and gathering intelligence) and for licensing members (with additional reviews and hearings).

There is also the potential impact, where Responsible Authorities have not fully engaged with the Licensing Act 2003, that they could put the burden of proof back on the Licensing Authority. This will result in an increase in review applications, and representations against applications, made by those licensing authorities who would now be engaging with the Act instead of. A further impact may be that formally raising licensing authority concerns results in better licences being issued and so safeguarding the local areas around licensed premises.

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

Reducing the burden of proof would be beneficial for an authority to be able to consider both the impact of the granting of a licence on the licensing objectives, as well as the wider actions that would be required by an applicant to promote them. It may also result in increased compliance with existing conditions and an increased willingness to implement Licensing Authority recommendations. The use of similar examples elsewhere to demonstrate a likelihood of a problem rather than having evidence would be advantageous. There is however an area of ambiguity regarding the wider effects and relating these back to individual premises.

- 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?

At present licence applicants have to consider the impact of their licence in regard to the four licensing objectives. If they do not put anything in the application on how they are going to do this and nobody makes a representation the licence has to be granted. This needs to be tightened up to ensure applicants are considering the local area. The legislation would need to define the local area as this appears to be significantly wider than the vicinity which is use currently.

All applicants should have to demonstrate within the operating schedule that they have considered what impact their premises will make to an area and

what they propose to do to mitigate against it. Many applicants put the onus on Responsible Authorities by not offering any proposals within their operating schedules; they just wait to see whether or not a Responsible Authority asks for conditions to be imposed by way of representations.

A requirement on the applicant to carry out pre application advertising/consultation with an option to make representations to the applicant (copy to Licensing Authority), may assist. This would enable the applicant to liaise with potential objectors prior to the expense of a full application and hearing and adjust the application accordingly or decide not to apply.

- 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 potential effect is that the police could make relevant representations without sound evidence. If the police do have sound evidence then they can make representation now.

Concern is expressed that should extra weight be given to Police representations that this could lead to frivolous or over zealous representations from Police looking to address issues that are not best addressed by the Licensing Act 2003, or poor representations that put the licensing Authority in a difficult position. Any representations from the police must be made on an evidential basis.

The police evidence should be relevant to licensable activities, or how the Licence holder can exercise any control over matters not within their range of responsibility.

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

One possibility would be to notify residents and/or businesses of applications by letter. This would be more time consuming and more costly. The other problem with this is where you draw the line on who gets notified. Greater use could be made of individual local members, area boards, community forums, media and websites to advise residents and community groups of applications. A question remains that if the Licensing Authority sends out notifications to the local residents and businesses whether this would be viewed as touting for representations.

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

If the vicinity was removed then anybody no matter how distant from the premises could make a representation. Whilst this would reduce uncertainty for both interested parties and for licensing authorities as to whether or not persons / bodies could be considered as being “in the vicinity”, it is likely that it would increase the number of objections to applications and so result in more

time consuming and costly hearings for the licensing authority. A challenge would be that unless the premises are going to have an impact on persons/business then why should they be able to make representations against the licence? It may also increase the number of potentially vexatious complaints. Another effect may be that if interested parties are not restricted to only those from within a Licensing Authority's area this may lead to organisations or pressure groups objecting to licence applications all over the Country without having the requisite local knowledge of an area or its problems.

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

This could be seen as over protection, and if alcohol is viewed as a harmful substance this could result in whole scale objections from the health community. However increased engagement from the health community on the consequences of alcohol would be welcomed, particularly on acute impacts such as accident and emergency admissions. There is a risk of potential challenges on applications and reviews on the health grounds, as there would need to demonstrate the link between specific premises and its consequential effects on the health of any individuals.

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

To make this workable there would have to be a definition of health and what is harmful; is this acute or chronic? The inclusion of prevention of health harm would be difficult for an applicant with no medical knowledge (persons working in licensed premises) to judge what harms individual persons. It would have the potential to make any licence more difficult to get as alcohol can have negative health effects.

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

The effect depends on what the definition of a community group is, and which community groups were included. As long as any representation would have to be made with regard to the licensing objectives this is not a problem. Too many responsible authorities could make the application process very onerous. With the potential of more objections appearing to affect community and so lead to increased hearings and reviews, with associated increases in costs to the licensing authorities.

Area boards, local members, and town and parish councils could be considered to represent community groups.

- 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 existing system currently provides a useful third party assessment which is both impartial and objective. A default position would produce conflicts between two licensing panels in the same authority, leading to loss of confidence in the impartiality of the hearings. This could also lead to difficulties for authorities in arranging appeal hearings with different Sub-Committees, to those that made the original determinations. There would be increased workload, costs from additional hearings.

- 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.

This proposal is supported as an improvement. It often takes a long time for an appeal to get to the magistrates court. The effect would be to improve the power of the review process by ensuring that problem premises are required to “change their ways” immediately, and not use the system to their advantage by appealing and then withdrawing at a later date.

- 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?

Licensing Authorities are aware of issues in their areas and are therefore able to judge the appropriate hours for problem areas, i.e. town centre locations. The flexibility of the orders may lead to a bigger uptake if they can be used successfully to address these problems areas.

This may lead to concerns from the trade as to on what grounds would an EMRO be made and is there any right of appeal/challenge? The need for EMROs is questioned. If licensing hours need to be changed it should be achieved through the existing hearing process

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

None, as they have proved difficult to implement and police, and have not really addressed the issues they were intended to.

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

It would make it easier to introduce Cumulative Impact Policies. Care must be taken to ensure that these are not used a too heavy handed way in areas that could be sorted in a different way.

Having such policies do not prevent applications being made, and subsequently granted by an authority, if an applicant can demonstrate in their operating schedule that there will be no negative cumulative impact on the licensing objectives. However they may give residents false hope.

- 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?

Any levy should be limited to recovering those additional costs incurred in policing or servicing those parts of the night-time economy that are causing problems for an authority, but not to generate a profit. There should be clear guidelines on how much can be levied, who can be levied and who the collecting authority is and how the money is then made available to other agencies. The costs need to be flexible as they will relate to police costs which will vary from place to place. Detailed costs will presumably be needed from the police in order to support the need for a levy.

Would it not be simpler for the levy to be raised directly by the police?

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

Yes, but any offer must be subject to clear guidelines, i.e. active participation in recognised schemes such as Best Bar None, or even better some demonstration of good performance. However taking part in Best Bar None or similar schemes must not be simply a token gesture but depend on the effective implementation of such a scheme.

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

Yes, but the costs will be challenged by the trade as services should be covered by NNDR. Any extra costs that a business causes should be paid by that business with clearly defined costs.

Taxi marshals are supported, but again will be open to challenge from business.

- 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 concern is that earlier closing times will not reduce alcohol related crime, but simply move the problems to a different time. People will probably consume the same amount of alcohol in a shorter space of time which may increase the problems of crime and disorder. Any imposition of closing hours is likely to be challenged by business, so the grounds for making these would be required.

- 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?

Opening up TENs to all responsible authorities will increase bureaucracy and mean these are no longer a light touch measure. The current time frame would be difficult to work within and would need to be extended if all responsible authorities were allowed to make representations. The existing application form gives insufficient details for most authorities to base any representation on. This change would also result in an increased workload on the Licensing Authorities and other Responsible Authorities (additional work in sending TENs out, and considering their implications) unless the applicants were required to do this. It is suggested that the only Responsible Authority that could be deemed appropriate to extend to is Environmental Health on noise concerns.

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

This would be a good idea as it gives them more time to consider the application and object if necessary. This would only be effective if the timescale for serving of the Notices was extended to more than the current 10 clear working days.

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

This proposal is strongly supported, as long as the legislation is clear and unambiguous. If the notice period was extended the concern is that this would make it more difficult for events organised by individuals to be arranged at short notice. It would also make the notice procedure more onerous on members of the public i.e. community halls etc. To ensure a fair system the notice period should be not be any different for licensed premises.

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

It is supported that premises that hold a licence should have the conditions of that licence attached to the TEN. This would not work for premises that are only licensed for alcohol and were using TENs to include regulated entertainment because they probably would not have the right conditions to deal with the added noise.

• 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?

Such a restriction would interfere with the applicants' ability to run bars off site i.e. for weddings. It would also be restrictive to catering companies operating at venues all over the country, requiring a national system of monitoring use of TENs. It is not clear how this would promote the licensing objectives.

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

This would reduce the number of events occurring in a particular area without the onus of a premises licence. An advantage may be to encourage some venues to get a full premises licence. It would be beneficial for the legislation to be reworded to define boundaries and the 499 limit.

- 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. We support an increase the maximum fine to £20,000, but revised guidance to magistrates is key to ensure that higher fines are applied, and increased publicity would help the promotion of this little used tool.

- 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?

An upper limit of 28 days (the review consultation period) may be more appropriate.

- 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?

This would increase awareness of checking the age of customers, send a strong message to the licensed trade. It could also give the licence holder more incentive to ensure staff are correctly and regularly trained on underage sales. However it would also result in additional reviews and increased workload for officers and members with associated costs.

- 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

It is assumed that the costs referred to does not include health related costs. There is no simple answer to this question. Costs need to be broken down from start to finish; Manufacture, tax, transport, staffing, promotions etc. The retail sector seems best placed to define this.

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

No comment.

- 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.

This is very difficult for licensing authority to determine. This should be a trading standards issue and not a mandatory condition and would also be open to significant level of challenge.

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

Yes, we support the increase in fees to recover true costs to licensing authorities. However precise, cost recovery will vary between Licensing Authorities, making national fees difficult to calculate. Increase of costs would have high impact on business especially at this time of economic recovery.

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

Yes this is strongly supported. It would make collection of revenue easier because we would have a usable lever to encourage payment. It would give the licence holder a greater incentive to pay the fees on time. This omission in the original legislation has resulted in additional work and lost income. Following non payment should also result in a requirement to re-apply from scratch.

- 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?

We do not believe that they have had a great impact on alcohol-related crime. The current wording makes the conditions difficult to enforce, so a redrafting may help their effectiveness.

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

No, as they give a consistent approach to all licensed premises where appropriate.

- 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?

We would support the following measures:

- Streamlined application process
- Drop the 3 year requirement to review policy. Only review where concerns have been raised.
- When a licence lapses under section 27 (death, incapacity or insolvency) the licensee only have a period of 7 days to reinstate the licence under sections 47 or 50. We believe this period should be extended to possibly 28 days.

- Creation of an offence for not transferring a premises licence to the new premises owner/operator within a specific time period. This will ensure licensing authorities have up to date information.
- Possible use of improvement notices by LA (Licensing Officers) to address minor infringements of conditions / operating hours.

Appendix 3

Licensing Act applications (1 January 2010 to 3 November 2010)

Licensing Act 2003 - Applications received					
	North	West	South	East	total
Personal licenses, premises licences (new, vary, transfer, review)	214	248	195	149	806
Temporary Event Notices	518	372	585	403	1878
Total	732	620	780	552	2684