

Lancaster City Council suggested responses to Home Office Consultation – Rebalancing The Licensing Act

<p>Consultation Question 1: What do you think the impact would be of making relevant licensing authorities responsible authorities?</p>	<p>This provision will remove the independence of the Sub-Committee when determining a licensing application if the Licensing Act Committee itself is the instigator of the 'representation' (if that is what it is) against a particular applicant.</p> <p>What will be the evidential basis for a refusal, revocation or review of a premises licence if no other representation is made and will powers be delegated to a licensing officer (as is the case with applications under the Gambling Act 2005) to make a representation so that the matter is then referred to the committee?</p> <p>We do think it would be reasonable for relevant applications that fall within a cumulative impact area to be automatically referred to a committee in the absence of any representations from the authorities or residents, so the onus is then on the applicant to demonstrate that his application will not add to that impact. However, on the face of it, the proposal to empower licensing authorities to revoke licences or refuse applications in their own right goes much further and potentially offends natural justice and established case law that a decision must be based on relevant evidence.</p>
<p>Consultation Question 2: What impact do you think reducing the burden of proof on licensing authorities will have?</p>	<p>Reducing the burden of proof on licensing authorities could lead to more challenges in the courts against their decisions.</p>
<p>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?</p>	<p>In order to ensure applicants consider the impact of their licence application on the local area, the licensing authority should have the ability/power to reject applications where the applicant has not provided any details in their operating schedule or their operating schedule is incomplete. In addition the licensing authority should have the ability/power to reject applications where, after considering the information presented in the operating schedule they feel the applicant has not given proper consideration to the local authority's statement of licensing policy or they have failed to adequately and comprehensively consider the impact of their application on the local area.</p>
<p>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?</p>	<p>This proposal is likely to offend principles of natural justice. It cannot be right for there to be a presumption in favour of police evidence which would have the effect of treating them as a 'superior' witness. Tribunals determining applications are required to assess the reliability as well as the relevance of evidence from all witnesses without fear or</p>

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	<p>favour. In our view, the Higher Courts are likely to uphold a challenge to a decision which is based solely on the fact that police evidence is to receive preferential treatment.</p> <p>We would always expect all representations, notices and recommendations from the police and indeed all other responsible authorities to be relevant having regard to the implications of the application in respect of the licensing objectives. We maintain that any conditions being imposed in response to submissions made by responsible authorities should be proportionate, enforceable, necessary and clear in their meaning</p>
<p>Consultation Question 5: How can licensing authorities encourage greater community and local resident involvement?</p>	<p>Based on the assumption that this question relates to consulting on a Statement of Licensing Policy, some authorities already consult a wider audience than is stipulated in the Act and the decision on whether to do this or not should be left at a local level.</p>
<p>Consultation Question 6: What would be the effect of removing the requirement for interested parties to show vicinity when making relevant representations?</p>	<p>This proposal could open the door to 'persistent objectors' who may live in the community but will not be directly affected by particular applications. Licensing Officers will still presumably need to be satisfied of the relevance of their representation, but it may be difficult for them to refuse to accept it if reference is made to some impact on the licensing objectives.</p> <p>Furthermore, the Government have said that they intend to encourage a greater say by local communities on licensed premises in their area and remove the 'presumption' in favour of applications being granted. The result of these proposals is likely to lead to an increase in Interested Party representations that will be treated as valid and therefore hearings before the licensing committee.</p>
<p>Consultation Question 7: Are there any unintended consequences of designating health bodies as a responsible authority?</p>	<p>No</p>

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<p>Consultation Question 8: What are the implications in including the prevention of health harm as a licensing objective?</p>	<p>We feel that including prevention of health harm as a licensing objective would have positive implications in that it would provide the possibility for a more rounded view in the overall implications of a licensing application</p> <p>The significance of these proposals if implemented is that representations could be made by Primary Care Trusts, supported by some statistical evidence of hospital admissions where alcohol consumption is involved, for the purpose of opposing an application for a new premises licence or extension of hours by existing premises.</p> <p>As with all other licensing objectives representations in relation to harm should be evidence based.</p>
<p>Consultation Question 9: What would be the effect of making community groups interested parties under the Licensing Act, and which groups should be included?</p>	<p>The measure may seem populist but is in our view superfluous as anyone living or working (including a business owner) in the community would already be entitled to raise representations.</p> <p>Community groups are already able to make representations on an application if they represent the views of residents or businesses in the vicinity.</p>
<p>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?</p>	<p>The Consultation document states that the Government wish to tighten the appeals process and ensure that "fewer appeals are heard in court" and also, where possible, seek to ensure that licensing decisions remain with the licensing authority.</p> <p>In our view, this proposal will offend natural justice and is unnecessary. An appeal tribunal as to the facts of a case should have an unfettered discretion as to how it deals with the appeal, which at present includes whether to remit the case back to the licensing authority to be dealt with rather than substitute its own decision.</p> <p>Remitting the case back to the authority as a default position would inevitably lead to unnecessary cost and delays and is also more likely to lead to 'boomerang' decisions where the licensing committee reinforce their original decision and the case goes back again to the appeal court.</p>

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<p>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.</p>	<p>We feel that this is a positive suggestion, however it should be dealt with in a way that is similar to Section 61(2)(b) of the Local Government(Miscellaneous Provisions) Act 1976, whereby the licensing authority has the power to invoke revocations/suspensions for taxi drivers that have immediate effect, but only where it is necessary in the interests of public safety.</p> <p>If immediate suspension/revocation was applied automatically without any qualification it may be considered to be contrary to Article 6 or Article 1 of the First Protocol.</p> <p>A suspension of the premises licence for up to three months, for example, has very serious implications for a business and can of course be catastrophic. This would invariably be the case if the licence is revoked. It would be too late for this decision to be reversed on appeal if the revocation or suspension had immediate effect on a business because of the time delay before an appeal is heard.</p>
<p>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?</p>	<p>We feel this would be beneficial, however a provision for some exemptions should be allowed.</p> <p>If an Order is made, it would affect existing premises trading beyond the specified hour that happen to be located in the wrong area even if there is no evidence of any crime or disorder associated with them. There is no current exemption for individual exemplary premises and this must be wrong in principle.</p>
<p>Consultation Question 13: Do you have any concerns about repealing Alcohol Disorder Zones?</p>	<p>No</p>
<p>Consultation Question 14: What are the consequences of removing the evidential requirement for Cumulative Impact Policies?</p>	<p>The Consultation document in this section states that the licensing authority should not be "constrained by the requirement to provide</p>

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	<p>detailed additional evidence where such evidence is unavailable". However we feel that all decisions should be based on relevant evidence otherwise decisions may as well be taken on assumptions</p> <p>Currently having to evidentially justify a Cumulative Impact Policy (CIP) helps the licensing authority to defend any challenge to that policy.</p> <p>This authority would like to see the guidance on CIP's extended to premises with off licences. Some areas where there are a large concentration of shops selling alcohol for consumption off the premises, in our experience can have an adverse effect on the licensing objectives. Where there is evidence that a concentration of these premises in a particular area is causing problems, we would like to be able to utilise a special policy in order to negate the cumulative impact.</p> <p>We also think it would be reasonable for relevant applications that fall within a cumulative impact area to be automatically referred to a committee in the absence of any representations from the authorities or residents, so the onus is then on the applicant to demonstrate that his application will not add to that impact</p>
<p>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?</p>	<p>On the understanding that 'Policing' is intended to include the work of licensing authority enforcement teams, then yes the late night levy should be limited to these additional costs.</p> <p>We agree that the local authority should be given some discretion on how much they can charge based on an appropriate costing analysis, ensuring that such levy was justified</p>
<p>Consultation Question 16: Do you think it would be advantageous to offer such reductions for the late night levy?</p>	<p>Appropriate reductions could be offered as an incentive to premises that maintain appropriate industry standards</p>
<p>Consultation Question 17: Do you agree that the additional costs of these services should be funded by the late night levy?</p>	<p>Yes we agree that some discretion should be allowed for local authorities to use a portion of the late night levy to fund additional costs of other services including taxi marshals and street cleaning.</p>
<p>Consultation Question 18: Do you believe that giving more autonomy to local authorities regarding closing times would</p>	<p>Yes, subject to consultation with partner agencies and stakeholders.</p>

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<p>be advantageous to cutting alcohol-related crime?</p>	
<p>Consultation Question 19: What would be the consequences of amending the legislation relating to TENs so that:</p> <p>a. All the responsible authorities can object to a TEN on all of the licensing objectives?</p> <p>b. The police (and other responsible authorities) have five working days to object to a TEN?</p> <p>c. The notification period for a TEN is increased, and is longer for those venues already holding a premises licence?</p> <p>d. Licensing authorities have the discretion to apply existing licence conditions to a TEN?</p>	<p>This would prolong a process which was initially introduced as a 'light touch'</p> <p>We feel that 2 working days is sufficient.</p> <p>This would produce an inconsistency, and the responsible authorities would already be aware of any problems relating to a particular premise. There does not appear to be any valid reason for this proposal.</p> <p>This would be advantageous and would ensure that applicants comply with the licensing objectives</p>
<p>Consultation Question 20: What would be the consequences of</p> <p>a. Reducing the number of TENs that can be applied for by a personal licence holder to 12 per year?</p> <p>b. Restricting the number of TENs that could be applied for in the same vicinity (e.g. a field)?</p>	<p>This would take away a business opportunity from someone with a personal licence who for instance caters at weddings and outside venues.</p> <p>This would close a common loophole</p>
<p>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?</p>	<p>Yes, but the power should be extended to trading standards.</p>
<p>Consultation Question 22: What do you think would be an appropriate upper limit for the period of voluntary closure that can</p>	<p>Up to 28 days, and again the power should be extended to trading standards</p>

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<p>be flexibly applied by police for persistent underage selling?</p>	
<p>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?</p>	<p>This would have a positive impact and could act as a deterrent</p>
<p>Consultation Question 24: For the purpose of this consultation we are interested in expert views on the following.</p> <p>a. Simple and effective ways to define the ‘cost’ of alcohol</p> <p>b. Effective ways to enforce a ban on below cost selling and their costs</p> <p>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.</p>	<p>This is likely to prove extremely problematic as each retailer applies a different 'cost' basis and implementation of the proposal could lead to either a minimum unit price for alcohol or a definition which is unenforceable.</p> <p>If the measures are implemented they are likely to impact primarily on supermarkets although the main difficulty remains how to regulate pricing in a consistent and effective way that avoids any restraint of trade difficulties.</p>
<p>Consultation Question 25: Would you be in favour of increasing licence fees based on full cost recovery, and what impact would this have?</p>	<p>Yes the licence fees should be based on full cost recovery.</p>
<p>Consultation Question 26: Are you in favour of automatically revoking the premises licence if the annual fees have not been paid?</p>	<p>Yes, however, it is not in fact compulsory at present for reminders to be sent and if an automatic revocation provision is included then this should be a requirement as a matter of fairness.</p>
<p>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?</p>	<p>We feel that as the ‘Mandatory Conditions’ have only just been enacted, it is too early to evaluate the impact they have had. We feel it would be more beneficial to hold a separate review/consultation in twelve months time.</p>
<p>Consultation Question 28: Would you support the repeal of any or all of the mandatory conditions (conditions (a) – (e) above)?</p>	<p>Please refer to our response to question 27</p>
<p>Consultation Question 29: Would you support measures to de-regulate the Licensing Act, and what sections of the</p>	<p>Interim authority notices following death – the time period should be extended from 7 days to 28 days.</p>

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Act in your view could be removed or simplified?	<p>We do not think that the requirement to have a provisional statement is necessary.</p> <p>Someone with a personal licence should be on the premise at all times while alcohol is being sold.</p>
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