

Agenda Item No: **Report No:**

Report Title: **Council Response to Central Government Proposals to Amend Alcohol Licensing Legislation**

Report To: **Licensing Committee** **Date:** **3 September 2010**

Lead Councillor: **Cllr Edward Collicot**

Ward(s) Affected: **All**

Report By: **Lindsay Frost, Director of Planning and Environmental Services**

Contact Officer(s): **Tim Albright, Environmental Health Manager**

Purpose of Report:

To allow members of the Licensing Committee the opportunity to respond, on behalf of the Council, to a Government consultation on proposals to alter alcohol licensing legislation.

Officers Recommendations:

- 1 To consider the suggested responses to the consultation.
 - 2 To authorise the Director of Planning and Environmental Services to respond to the consultation on behalf of the Council.
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1 Reasons for Recommendations

- 1.1 To ensure that the Council, as a Licensing Authority, takes the opportunity to make representation on the future of the Alcohol Licensing system.

2 Background

- 2.1 The Government stated in its Coalition Agreement that it would review and revise the current alcohol and entertainment licensing legislation. The Government is now consulting interested parties on its proposals.
- 2.2 In the Ministerial Foreword to the proposals, the Minister states that *'the Licensing Act is due an overhaul and that through this, the power to make licensing decisions needs to be rebalanced in favour of local communities'* and *'a new licensing regime needs to be established with local authorities and the police better able to respond to local resident's concerns'*.
- 2.3 The full consultation document is attached in Appendix 2.

3 Local Context

- 3.1 The perceived deficiencies of the Licensing Act are perhaps less noticeable within the Lewes District. Rates of alcohol related crime and disorder are low in this area compared to the national situation. However, the incidents that do occur are of major concern to residents, and contribute to the fear of crime, which is a significant problem locally.
- 3.2 Owing to the impact on residents' feeling of safety, alcohol related crime and disorder remains a priority for the Community Safety Partnership.
- 3.3 The impact of the Council's Licensing Committee, Licensing Officers and their close working arrangements with Sussex Police and Trading Standards should not be ignored when considering the relatively low crime rates in the area.
- 3.4 The proposals, if implemented, have the capacity to increase community involvement in licence determinations and strengthen the Council's powers as a licensing authority.

4 Draft Responses for Consideration

- 4.1 The questions posed in the consultation and draft responses for consideration are attached in Appendix 1.

5 Financial Appraisal

- 5.1 There are no direct financial implications resulting from this report. However, the cost of delivering the Alcohol Licensing function of the Council is not fully recovered via the income from licensing fees, which are set nationally. The proposals for changing the legislation include opportunities for changes to the fee structure to enable Licensing Authorities to reduce the net cost of delivering the service.

6 Environmental Implications

- 6.1 I have completed the Environmental Implications Questionnaire and there are no significant effects as a result of these recommendations

7 Risk Management Implications

- 7.1 There are no significant risk management implications as a result of these recommendations

8 Appendices

- 8.1 Appendix 1. Draft responses to consultation questions
- 8.2 Appendix 2. Rebalancing the Licensing Act – consultation document

Appendix 1. Lewes District Council Draft Response to Rebalancing the Licensing Act

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

The Council would foresee this having a positive impact on the local accountability of the licensing system, and as such would support the proposal. We would also anticipate a greater enforcement role as a responsible authority, and would ask that licensing fees are reviewed to adequately fund this increased demand on resources

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

The Council would welcome the increased flexibility in determinations that this change would permit, and this would anticipate improvements to the appropriateness and enforceability of conditions that are attached to licences.

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 Council would support a simple change to the licence application to include the questions 'what are the potential positive and negative impacts of this application on the local area, and how will any negative impacts be minimised?'

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 Council has not experienced any difficulties with the current Act in this regard. The Council already gives the Police appropriate weight as a responsible authority and only entertains representations when they are relevant.

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

The Council believes that encouraging local involvement is a national, as well as local, priority. We would welcome a national awareness campaign and would assist in the implementation of such a campaign at a local level.

The Council believes that there is scope for requiring licensing authorities to automatically notify local elected members in the area of applications in their wards to increase community involvement.

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

The Council has grave concerns regarding this proposal. Such a move would dilute the community involvement and local accountability of the licensing system, and may open the

system to abuse by creating a route for vexatious representations from national organisations.

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

The Council would not anticipate any unintended consequences, and would welcome the input of health bodies in considering the public health impacts of licensing decisions.

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

Sensible alcohol sales have already been included as part of the mandatory conditions being introduced this year, but should the mandatory conditions be removed the Council would welcome this inclusion to allow the licensing authority to consider the local public health impacts of licensing decisions

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

The Council would support this proposal, and would envisage an increased level of community involvement as a result of this change.

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 Council supports the move to ensure licensing decisions remain with the licensing authority, but to date has not experienced difficulties with the current arrangements

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.

The Council supports this proposed amendment in that it would strengthen the review system, but we would anticipate significant issues with compensation claims if review decisions are immediately applicable only to be subsequently overturned on appeal.

12: What is the likely impact of extending the flexibility of Early Morning Restriction Orders to reflect the needs of the local areas?

The Council would support the introduction of flexible EMROs as an additional option open to licensing authorities to control late drinking in problem areas.

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

No

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

No comment as no CIP in place locally

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?

The Council would support such a change, but would urge that the charge is allowed to be flexible in order to cover all increased enforcement and other actions that are targeted at problem late night drinking. As well as Policing, the charge could resource licensing authorities to undertake late night enforcement and fund social interventions such as late night street chaplains and youth workers.

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

The Council believes that such reductions would be advantageous to encourage premises to partake in both national and local initiatives such as pub watch schemes.

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

Yes

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

Yes

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 proposal will have a significant impact on the administration of the licensing system, which would need to be reflected in increased fees for TENS. A requirement to notify all responsible authorities instead would allow proactive control of likely problem events via alternative legislation, e.g. fire precautions and noise control.

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

The Council would support this change to allow the Police a reasonable period to fully consider the implications of all TENS.

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

The Council would welcome the increased notification period to allow responsible authorities a reasonable period to consider applications, but does not see any advantage in having different notification periods for different premises.

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

The Council would welcome this change as it would allow consistent control of alcohol supply and regulated entertainment at a premises irrespective of the nature of the licence.

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?

The Council has concerns that this would unfairly impact responsible mobile businesses, and lead to 'puppet' licence holders applying for TENs who will not, in reality, be in control of an event.

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

The Council would welcome the closure of this loophole and would further welcome better guidance on the definition of 'vicinity'

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?

No experience of voluntary closure so no comment

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?

No experience of voluntary closure so no comment

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 Council would envisage this having a very positive impact on the rigour of the licensing system, and would strongly support this change

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.**

The Council has no comment regarding the definition of cost, but any licence condition must be clearly understood by both trade and regulators and be enforceable.

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

The Council would be strongly in favour of this proposal, as it would ensure the continuing upholding of the licensing objectives through effective administration and enforcement.

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

The Council is strongly in favour of this proposal to enhance the efficiency of the licensing system

27: Have the first set of mandatory conditions that came into force in April 2010 had a positive impact on preventing alcohol-related crime?

The Council is not aware of any significant impact on crime prevention.

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

The mandatory conditions have limited impact on the licensing objectives locally, so the Council would support the repeal of these conditions to simplify the system.

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?

The Council would support sensible de-regulation, including the removal of the requirement to determine policy every three years. Any simplification and/or better guidance for applicants on application forms would be welcomed.