

***Christian Concern for our Nation &
the Christian Legal Centre
Response to the Home Office
Consultation on Rebalancing the
Licensing Act
September 2010***



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About Us

Christian Concern for Our Nation (CCFON) is a policy and legal resource centre that identifies changes in policy and law that may affect the Judeo-Christian heritage of this nation. The team of lawyers and advisers at CCFON conduct research into, and campaign on, legislation and policy changes that may affect Christian Freedoms or the moral values of the UK. CCFON reaches a mailing list of 25,000 supporters. <http://www.ccfon.org>

CCFON is linked to a sister and separate organisation, the Christian Legal Centre, which takes up cases affecting Christian freedoms. <http://www.christianlegalcentre.com>

How to Respond

The Consultation details can be found at the following link:

<http://www.homeoffice.gov.uk/publications/consultations/cons-2010-licensing-act/>

The Closing date is the 8th Sep 2010

Respond online by filling in the online form.

Alternatively, please send your response to:

Alcohol strategy unit, Home Office

4th floor Fry building, 2 Marsham Street

London

SW1P 4DF

Email: Alcohol.consultation@homeoffice.gsi.gov.uk

Executive Summary

1. We welcome the Government's proposed overhaul of the Licensing Act ("Act"), the intention to rebalance the Act in favour of local communities and the desire to combat the problems of alcohol related crime.
2. Alcohol abuse and binge drinking can often cause anti-social behavior, alcohol related violence and noise nuisance late at night. Binge drinking is also linked to an increase in abortions and sexually transmitted diseases.¹ Everyone would like our towns and cities to be safe environments at night. On this basis we propose that it is necessary to put in place the suggested licensing restrictions mentioned below. We also recommend that the Government give due consideration to the effect of reducing licensing hours nationally.
3. We welcome the proposal to legally ban the sale of alcohol below cost price. Some Local Councils are already doing so. For example, local bylaws are being planned by all 10 Greater Manchester Councils to ban the sale of alcohol for less than 50p per unit.² A mandatory licence condition could apply to ban the sale of alcohol below cost price in pubs and night clubs.³
4. Banning drink promotions such as "all you can drink for a tenner"⁴ in pubs or nightclubs would also help to reduce binge drinking.
5. We agree with the Minister's foreword to this consultation that the presumption to approve all new licence applications must be removed. This presumption has led to increased alcohol related problems in licensing venues and a rapid proliferation of lap dancing clubs. In 1997 there were 24 lap dancing venues; now there are approximately 300.⁵
6. We welcome the Government's commitment to ensuring that local people are able to enjoy all parts of their community without feeling intimidated by those who have drunk too much, as well as the commitment to reduce the burden on frontline services which often have to deal with alcohol related incidents.⁶ We hope that this commitment will also cover the need to protect women in the community who may feel uncomfortable or sexually threatened by the opening or continuation of lap dancing venues.

¹ See the Daily Telegraph 21 August 2010 article "Binge drinking" ladettes more likely to need help after unprotected sex: <http://www.telegraph.co.uk/health/healthnews/7957486/Binge-drinking-ladettes-more-likely-to-need-help-after-unprotected-sex.html>

² See the Macclesfield Express 4 August 2010 article on threat to ban cheap booze. http://menmedia.co.uk/macclesfieldexpress/news/s/1312937_threat_to_ban_cheap_booze

³ The Mandatory Code of Practice (Mandatory Licensing Conditions) Order 2010 appears to have some measures on these issues.

⁴ See the Macclesfield Express 4 August 2010 article on threat to ban cheap booze. http://menmedia.co.uk/macclesfieldexpress/news/s/1312937_threat_to_ban_cheap_booze

⁵ See Domesday Book 2010: Daily Mail 22 February 2010.

<http://www.dailymail.co.uk/news/article-1252734/Domesday-Book-2010-Strip-clubs-soaring-libraries-disappearing--figures-lay-bare-life-modern-Britain.html>

⁶ See paragraph 9.03 of this consultation on banning below cost sales.

7. The Policing and Crime Act 2009 provided for a new regime for the licensing of lap dancing venues whereby Councils can choose to pass a resolution to subscribe to the new regime. If Councils adopt the new regime then lap dancing venues, like sex establishments, would come under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (LGMP). This would make the licensing for lap dance venues consistent with sex establishments which also require Council adoption. A sensible proposal would be to make this aspect of licensing consistent by bringing both lap dancing venues and sex establishments under the LGMP Act.
8. We note from a Parliamentary answer by the Solicitor General on 26 October 2009 that it may have been the original intention of the Government for lap dancing to no longer come under the Licensing Act.⁷ We would agree with this reasoning as the Licensing Act, local authority statements of licensing policy and section 182 guidance all appear to be geared to dealing with pubs and nightclubs rather than sexual entertainment venues.
9. We propose that the Licensing Act should include as wide a definition as possible to the current 4 licensing objectives which have to be considered in all applications. This should enhance the importance of local community concerns in the Licensing system.⁸
10. Local communities should be encouraged to participate in the licensing process in order to protect the wellbeing of their own neighbourhoods. Participation could be encouraged by

⁷ See Parliamentary answer by the Solicitor General **26 Oct 2009 : Column 15W**:

“..Through the Policing and Crime Bill, currently before Parliament, we will give greater powers to local authorities and local communities to control the opening and regulation of lap-dancing clubs. This means lap-dancing clubs will no longer be licensed under the Licensing Act 2003 but will be licensed as 'sex establishments'.”

<http://www.publications.parliament.uk/pa/cm200809/cmhansrd/cm091026/text/91026w0003.htm>

⁸ This aim could be helped by amending the section 182 guidance as much as possible to take account of local community concerns. There needs to be a refocus away from just considering the effects of the licensing objectives on the internal premises to focus upon its local community impact. The prevention of crime and disorder should clearly state that it includes unreported crime; the fear of crime for women and preventing crime against passersby; or those who live, shop or work in that area who may be targets of attacks or sexual attacks.⁸ Public Safety could also clearly state it covers the public safety for the public in the town or city centre where the pub or club is expected to be located. The objective of public safety should explicitly state that it includes the concerns for women and/or children in the local community not just staff or performers* in the licensed premises. Public nuisance retains its broad common law meaning** but it should also include situations where only 1 or 2 residents may be affected by noise or other nuisance. There should be more emphasis upon the importance of the protection of the moral side, under the objective heading of the protection of children from harm. ***

*See paragraph 2.31 of the revised section 182 guidance dated the 30 March 2010 which states that public safety includes the safety of performers appearing at any premises but does not specifically mention it includes the safety of the public.

**See paragraph 2.33 of the revised section 182 guidance dated the 30 March 2010.

*** See paragraph 2.41 of the revised section 182 guidance dated the 30 March which is the only paragraph to mention this point. The guidance should stress concern about the early sexualisation of children and that children need to be protected from moral, psychological and physical harm. An awareness of lap dancing by advertising or other means will result in early and local knowledge of adult sexual performances being available that are demeaning to women and will detrimentally affect the moral values of young people in the local town or city centre :

http://webarchive.nationalarchives.gov.uk/+http://www.culture.gov.uk/images/publications/DCMS_LicensingGuidanceceb.pdf

educating local communities about the licensing process and by making it more accessible to the average person - more user friendly; lowering the evidential requirements; allowing for evidential weight to be given to petitions; removing the burden of potential costs for appeals and removing the prejudice against local communities evidence by removing any assumption that it will be frivolous, vexatious or repetitious.⁹

- II. The normal time period for consultations for the previous administration found in the “Code of Practice on Consultation” is a minimum period of 12 weeks.¹⁰ It is of concern that this consultation only covers a 6 week period over the summer break which will curtail the opportunity for obtaining responses. It is hoped that in view of this, a period of at least 6 weeks will be allowed for consultation on any draft Bill which may change the Licensing Act. The coalition agreement included a commitment to introduce a new “public reading stage” to give the public an opportunity to comment on proposed legislation on-line, and a dedicated “public reading day” within a Bill’s Committee stage where the comments will be debated by the Committee scrutinising the Bill.¹¹

Rebalancing the Licensing Act

Giving more local powers to refuse and revoke licences (part I)

Proposal:

- Give licensing authorities the power to refuse licence applications or call for a licence review without requiring relevant representations from a responsible authority (Paragraph 5.03).

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

⁹ See Sections 18(7) (c); 18(7); 18 (8); 51 (4)(b); 51(5) and 51(6) of the Licensing Act 2003

http://www.opsi.gov.uk/acts/acts2003/ukpga_20030017_en_5#pt3-pb10-11g52

¹⁰ See <http://www.bis.gov.uk/files/file47158.pdf>

¹¹ See page 27 of the Coalition-Our programme for government at the following link:

http://www.cabinetoffice.gov.uk/media/409088/pfg_coalition.pdf

Note to date there is only mention of one draft Bill on the Parliamentary website but a web page has been set up for them:

<http://www.parliament.uk/business/bills-and-legislation/draft-bills/>

The impact would be positive as licensing authorities need the powers to deal with irresponsible retailers and tackle alcohol-related violence and anti-social behaviour. However, mechanisms would need to be in place to avoid compromising the licensing authorities' impartial judicial role.

Proposals (Paragraph 5.04):

- Reduce the evidential burden of proof required by licensing authorities in making decisions on licence applications and licence reviews.
- 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 Act objectives.

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

It will have a positive impact and help to remove the current presumption which favours the granting of an application for a licence.

The Licensing Act should also be amended to reduce the evidential burden for local communities as interested parties.¹² Although the Licensing Act gives the power to reject an application for a licence or a variation of a Licence,¹³ the current section 182 guidance with its

¹² See the case of Regina (Daniel Thwaites plc) v Wirral Borough Magistrates' Court QBd, 6 May 2008 [2008] EWHC 838 (Admin)[2009] P.T.S.R. 51

This case may be used to increase the evidential burden on interested parties and undermine legitimate local community concerns.

"Held , allowing the claim and quashing the decision, (1) that in exercising its licensing functions a licensing authority or a magistrates' court was not entitled to ignore or fail to give any weight to the ministerial guidance issued in July 2004 under section 182 of the Licensing Act 2003 and had to give proper reasons for departing from it; that both the 2003 Act and the guidance made it clear that licensable activities were to be restricted only where such restriction was necessary to promote the four licensing objectives set out in section 4(2) ; that the starting point was that a limitation on a licence ought not to be imposed unless it was necessary to promote those objectives; that to be necessary a regulatory provision had to be proportionate; and that although justices were entitled to take into account their own local knowledge, they should measure those views against the evidence presented to them and adjust their own impression in the light of that evidence (post, paras 38, 40, 41, 55, 59).

*(2) That the justices' approach to what was " necessary" was coloured by a failure to take proper account of the changed approach to licensing introduced by the 2003 Act, which called for a greater reluctance to impose regulation; that they *52 proceeded without proper evidence and gave their own views excessive weight, and their resulting decision limited the hours of operation of the premises without it having been established that it was necessary to do so to promote the licensing objectives; and that in all the circumstances their decision was unlawful and must be quashed (post, paras 63, 68)."*

¹³ See sections 18 4(d) and 35(4) (b) of the Licensing Act 2003:

http://www.opsi.gov.uk/acts/acts2003/ukpga_20030017_en_4

emphasis upon licence conditions fails to stress this important point. The right to reject a licensing application may also fail to be mentioned in an individual local authority statement of licensing policy. Currently, the wrong impression is given that licensing applications cannot be rejected and ought to be granted as long as the conditions attached to the licence are adequately able to meet the necessary licensing objectives. Positive action will need to be taken in all areas of law, guidance and policy to remove the entrenched current attitudes that Licence applications have to be granted.

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?

- Yes ✓
- No
- Maybe

Please outline any suggestions below.

The Licensing Act, the application form for a licence, the local authority statement of licensing policy and the section 182 guidance should all emphasise that applicants need to consider the impact of their licence application on the local area. The burden of proof should be upon the applicant to prove that their application for a licence will have a beneficial impact upon the local area and not be detrimental to it. The current regime places an emphasis upon its internal impact rather than its local area impact.

In terms of the impact on the local area, if the Council has not adopted the new regime for lap dancing then the Licensing Act should ensure that applications made for a Sexual Entertainment Venue Licence will not generally be deemed appropriate if the premises is near or in locations or areas containing any of the following:

- (i) Historic buildings, restoration areas, improvement areas, conservation areas or tourist attractions;
- (ii) Schools, play areas, nurseries, children's centres or similar premises;
- (iii) Shopping complexes;
- (iv) Residential areas;
- (v) Places of worship; or
- (vi) Community facilities or public buildings including but not limited to swimming pools, leisure centres public parks, youth centres/clubs, mentally incapable centres, disability centres, and sheltered housing.

The above also including, but not limited to, access to and from such places.

Proposal:

- Increase the weight licensing authorities will have to give to relevant representations and objection notices from the police (Paragraph 5.05).

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?

It may have a very detrimental effect and we would strongly oppose such a change. The local Licensing Committee and magistrates are the licensing authorities. The licensing authorities may already give far too much weight to police evidence and recommendations, and far too little weight to representations from local communities about the detrimental impact of licences on the local area.

The whole system is balanced in favour of the applicant. An applicant may spend very little time in completing the application form for a licence. When such an application is submitted, the police immediately provide practical assistance to the applicant in providing licence condition recommendations. The applicant needs to take little or no responsible action himself to support his own application.

In contrast, local communities have to spend weeks and months opposing such applications. They are provided with little or no practical assistance or help in objecting to such applications.

One licensing objective is the prevention of crime and disorder.¹⁴ Local community concerns should be taken into account regarding crime and disorder, not just the police's figures on reported crime. Unpleasant threatening remarks by drunks, fights or petty vandalism may well be unreported to the police but create an uncomfortable and intimidating environment for the public. The prevention of crime and disorder and the licensing objective of public safety should take into account the public fear of crime and the potential for no go areas to develop in town centres.

¹⁴ See section 4 of the Licensing Act 2003 on the 4 licensing objectives: Namely, the prevention of crime and disorder; public safety; the prevention of public nuisance; and the protection of children from harm.

Giving more local powers to refuse and revoke licenses (part 2)

Involving the community and their representatives

Proposal:

- Increase the opportunities for local residents or their representative groups to be involved in licensing decisions, without regard to their immediate proximity to premises (Paragraphs 5.07 and 5.08).

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

There are a number of measures which could be undertaken in order to encourage greater community and local resident involvement in licensing decisions for interested parties:

- People need to be educated about the licensing process.
- Make the process more user friendly and show local people how they can object and the grounds to do so. Legislation should place a statutory duty on local authority licensing departments and the police to both provide help and advice to local people who wish to object. The police currently appear to focus on the licence applicant rather than the local community.
- Local people have to overcome a number of hurdles; firstly to see the notice of an application, secondly to put in the objection in time and thirdly to say that they wish to attend a hearing.
- In relation to the first step, a notice of the application should be placed prominently at or on the premises to which the application relates where it can be conveniently read from the exterior of the premises¹⁵. If this is not the case, then the Licence or variation of licence should be refused. An individual could then apply for failure to give proper notice at either the Licensing Committee or the Magistrates Court, as appropriate. The Licensing Act or regulations should be amended to allow for such a change to the 2005

¹⁵ See Regulation 25 <http://www.opsi.gov.uk/si/si2005/20050042.htm>

Amendments to the 2005 regulations in 2009 on advertising notices but this did not effect regulation 25

http://www.opsi.gov.uk/si/si2009/pdf/uksi_20091809_en.pdf

regulations on advertising.

- In relation to the second step, interested parties can be helped by appropriate help and guidance from the Licensing Department and/or the relevant responsible authorities.
- Regarding the third step, it should be automatically assumed that those making an objection will want to attend a hearing. The requirement to request a hearing should be removed. The need to apply to request a hearing within a limited time makes the system over-complicated.
- Any guidance for local residents and businesses on how to object needs to include:
 - Practical examples of petitions;
 - Standard letters of objections with examples of how to elaborate dependent on the local circumstances;
 - Case studies on how to effectively object to new licenses or variations of licence including different types of licenses i.e. pubs/clubs/ nightclubs/off-licence/lap dancing venues; and
 - The licensing objectives with practical examples of acceptable forms of objection.
- Petitions which measure the weight of public opinion need to be given proper evidential weight both in the Licensing Committee or Magistrates Court on Appeal.
- Petitions are no longer taken account of as a petition duty by local authorities for Licensing and planning matters due to recent regulations.¹⁶ The reason for this is to avoid duplication due to the right to appeal. However, if no weight is given to petitions by Magistrates in Appeals, then local views are simply ignored.¹⁷
- The Licensing Act needs to ensure there is a costs free forum for anyone participating in the appeal process.¹⁸

¹⁶ See The Local Authorities (Petitions) (England) Order 2010

http://www.opsi.gov.uk/si/si2010/ukxi_20100898_en_1

In order to avoid confusion and duplication with existing statutory arrangements for citizens to express their views, the [Local Authorities](#) (Petitions) (England) Order 2010 excludes petitions on planning decisions and on licensing decisions on alcohol, gambling or sex establishments, from the scope of the petitions duty.

<http://www.theyworkforyou.com/wms/?id=2010-03-30a.93WS.1>

¹⁷ For example in the Oxford Magistrates Court ,an appeal at the end of June 2010 against the Licensing Committee decision to grant a lap dancing application, the Deputy District Judge was not prepared to give evidential weight to a petition.

¹⁸ The government guidance for interested parties on appeals states under the heading of “Costs” as follows: “If you appeal against a licensing authority’s decision, and you are unsuccessful, the magistrates’ court can award costs against you as it sees fit. This would mean that you would have to pay the other parties legal costs as well as your own. **However, the Magistrates Association and the Justice’s Clerk Society has advised that awarding costs for a licensing appeal should be an exception and not a rule, and any resident with reasonable grounds for an appeal should not be penalised.**”

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

It would have a very positive impact. The word “vicinity” has not been defined in the Licensing Act. It relates to how close a person lives to, or has a business close to, the proposed licence premises. Some local authorities have interpreted the word “vicinity” in a narrow sense to mean that only people who live or have a business at a fixed distance from the proposed pub or nightclub are entitled to be regarded as interested parties. However, some authorities have adopted a wider definition of vicinity. For example, the Oxford City Council Statement of Licensing policy states that “*The Authority will consider representations from those that can demonstrate that they are (or, in the case of new premises, are likely to be) affected by activities occurring on the premises.*”¹⁹

Local people who live on the outskirts of a town or city but still regard it as their own may find it unjust that they are not regarded as interested parties. Even in a wider interpretation of the term “vicinity”, there is still doubt if local people’s views will be taken into consideration. We believe it would be better to remove the term “vicinity” entirely and allow all persons with an interest in the local area to be regarded as an interested party. The environment of a local town centre is for everyone in the local community, and those who use it should be entitled to have a say.

Public Health

Proposal:

Despite this guidance, costs of £12,000 were awarded to be paid by an interested party on an unsuccessful Oxford Magistrates Court appeal on a lap dancing variation under the Licensing Act 2003.

<http://www.culture.gov.uk/images/publications/GuidanceAppeals.pdf>

This is the reason why no costs being paid by interested parties at Magistrates Court Appeals needs to be included in the law. Case law may allow for such costs.

¹⁹ See paragraph 2.5.11 of the Oxford City Council Statement of Licensing Policy:

<http://www.oxford.gov.uk/Direct/OxfordStatementofLicensingPolicy.pdf>

- 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 (Paragraphs 5.10 - 5.12).

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

- Yes ✓
- No
- Maybe

Please specify in the box below:

There would be administrative costs for health bodies involved in the Licensing process, yet such costs may be counterbalanced by the saving on alcohol related health care costs.

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

It would be very helpful to do so as there could be a saving on costs to health bodies. In East Cheshire the cost to the primary care trust from alcohol related incidents is reported to be £33 million per year.²⁰

In addition to well documented alcohol related health harm, we note that lap dancing venues can also cause harm to health. Evidence suggests that there may be an increased risk of sexual assault on women in the vicinity of lap dancing venues.²¹

²⁰ See the Macclesfield Express 4 August 2010 article on threat to ban cheap booze.
http://menmedia.co.uk/macclesfieldexpress/news/s/1312937_threat_to_ban_cheap_booze

²¹ See The Guardian 23 April 2008 commentary on -Lap Dancing Naked Truths:
<http://www.guardian.co.uk/commentisfree/2008/apr/23/ukcrime>

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

It would have a positive impact to include as many community groups as possible as interested parties. However, instead of providing a long list of community groups that should be included as interested parties, it would be far better to simply allow “any person” to put in objections.²²

Giving more local powers to refuse and revoke licences (part 3)

Overhauling the appeals process for licence application determinations

The Government is considering options to tighten the appeals process and ensure that fewer appeals are heard in court and that, where possible, the power for determining licensing decisions remains with the licensing authority.

Proposal (Paragraphs 5.14 - 5.18)

- Amend the process of appeal to avoid the costly practice of rehearing licensing decisions.

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?

It would be a definite improvement on the current situation. The Licensing Act should also state that no costs should be paid by the interested parties on a Magistrates Court hearing up to and including any final hearing.

²² This proposal would be similar to the position for new sex shop applications under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982. Allowing any person to put in objections to new sex establishments appears to have been operating successfully since that Act. There is no reason why a similar provision should not successfully operate for all licensing applications under the Licensing Act. Such a provision would be much fairer and remove any necessity to even consider an alternative to vicinity or any other local area criteria.

The consultation refers to the case of (*Sagnata Investments Ltd v Norwich Corpn [1971]*), which indicates that the appeal at the magistrates is by way of rehearing.²³ However, that case may also be used at the Magistrates Court to argue that the default position is to support the original Licensing Committee decision. The adoption of such a position would appear to be contrary to safeguards to ensure that Article 6 ECHR rights to a fair trial are not compromised.²⁴

There seems to be no reason why the right of appeal should not normally be made directly to the original Licensing Committee, without any need for an appeal to the Magistrates. We propose that there should be time limits within which an appeal must be made and that no Licence should come into operation until after the decision.

To protect Article 6 rights, there should also be an opportunity for a further appeal to the Magistrates Court. If there was a further appeal, again, no costs should be paid by the interested parties on a Magistrates Court hearing up to and including any final hearing.

Appeals by applicants on licence reviews

Decisions taken by the licensing authority at a review hearing do not take effect until any appeal is disposed of. There is evidence to suggest that some decisions are appealed against purely to ensure that the premises is able to trade during a profitable period (e.g. Christmas), and that the appeal may often be withdrawn once this period had passed.

Proposal (Paragraph 5.19)

- The sanctions imposed by a licensing authority should come into force when the holder of the premises licence receives the determination of the decision from the licensing authority, and the sanctions should remain unless and until an appeal to the magistrates' court is successful.

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?

It is agreed that review hearings decisions should come into force immediately to improve the enforcement of the Licensing Act, because insufficient attention is currently given to both enforcement and review. Breaches of the Licence conditions, either the original licence or a variation of licence should lead to an automatic right for a review.

²³ See Paragraph 5.17 of this Consultation.

²⁴ See point made in Paragraph 5.18 of this Consultation on the need for Article 6 safeguards.

A review should be triggered in these circumstances regardless of whether or not the report of the breach is from an interested party or from a responsible authority.

Dealing with the problems of late night drinking (part I)

Early Morning Restriction Orders

Proposals (Paragraph 6.03 and 6.04)

- The government intends to commence this power with a significant amendment to allow local councils to decide between which hours they would like to prevent premises from opening, according to what they believe to be most appropriate for their local area.
- The relevant legislation will also be amended so that an Early Morning Restriction Order could be created if it was felt to be "beneficial" for the promotion of the licensing objectives rather than if it is felt to be "necessary" as is currently the case.

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?

It would be an improvement to the current situation but it does not go far enough. The disadvantage of the EMRO is that it requires the local authority to take a positive optional step to introduce a measure which may be seen as unpopular by pub and club owners.²⁵

Rather than amend previous legislation that is not yet in force, it would be better to introduce a system to remove the possibility of '24 hour drinking' entirely. We propose that simple rules restricting licensing hours to set times or periods of time would be the most effective solution to these problems.

Alcohol Disorder Zones

Proposal (Paragraph 6.07)

²⁵ See Section 55 of the Crime and Security Act 2010 which has not been brought into force but adds section 172A to the Licensing Act 2003.

http://www.opsi.gov.uk/acts/acts2010/ukpga_20100017_en_11#pb12-11g55

- Repeal the unpopular power to establish Alcohol Disorder Zones and allow licensing authorities to use a simple adjustment to the existing fee system to pay for any additional policing needed during late-night opening.

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

- Yes
- No ✓
- Maybe

Please specify in the box below

No, it is an optional measure which is not being used by local authorities as it may create stigmatised areas.

Cumulative Impact Policies

Proposal (Paragraph 6.09)

- Simplify Cumulative Impact Policies to allow licensing authorities to have more control over outlet density.

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

We support the removal of the evidential requirement for cumulative impact policies. The evidential requirement has meant that cumulative impact policies may rely too heavily on reported crime statistics and/or hospital pickups.²⁶ Such statistics do not take account of the concerns of local people due to unreported crime, public nuisance from extra litter from takeaways, cans and bottles, together with sick or urination in the doorways of shops, offices, residences or churches. Crime statistics do not include unreported vandalism such as shop window breakages, sleepless nights from noise, a general feeling of the area being uncomfortable or unsafe and women and children's public safety concerns. A licensing application should not be allowed if it is detrimental to the concerns of local people or has any

²⁶ See Appendix 10, 11 and 12 of Appendix on the Oxford City Council Special Saturation Policy in the Statement of Licensing Policy with the evidence provided by the Police in Appendix 12:

<http://www.oxford.gov.uk/Direct/OxfordStatementofLicensingPolicy.pdf>

cumulative impact.

Cumulative impact policies should take account of local community concerns, together with the need to preserve the character of the locality. Account needs to be taken of the need to preserve a conservation area or a site of historical or cultural importance. Consideration needs to be given to local plans to regenerate and improve the image of an area.

Dealing with the problems of late night drinking (part 2)

Late night levy

Proposals (Paragraphs 6.10-14)

- Legislate to enable licensing authorities to charge a late night levy to help pay for the additional cost of policing the local night-time economy which arises as a result of the sale of alcohol, where this is deemed necessary.
- The levy would be introduced as an additional charge for licensed premises that local authorities have the discretion to introduce. This would apply to premises that have a licence to open beyond a specified time (e.g. all premises that open after midnight on any day of the week).
- It may be possible to use the late night levy either as a means of recovering additional costs related to late night policing as a result of the sale of alcohol (in which case it would be determined by the additional cost of policing in the area it is applied, and the number of premises the cost is divided between). It may also be possible to allow the local authority some discretion over the amount that is charged for the levy or for them to use some of the proceeds to fund additional services such as taxi-marshalling or street cleaning.

Consultation Question 15a: Do you agree that the late night levy should be limited to recovery of these additional costs?

- Yes
- No ✓
- Maybe

Please outline your reasons in the box below

We do not agree that the late night levy should be limited to recovery of these additional costs, as there are many other hidden costs. The collection and calculation of such sums involves

administrative costs. In addition the costs of extra rubbish bins, the costs to local businesses of smashed windows/damaged signs or other vandalism, the need for improved lighting or CCTV cameras and the costs of monitoring of such cameras may all be required as a result of any disorder. These are just the immediate practical costs without any consideration of the alcohol related health costs.

Consultation Question 15b: Do you think that the local authority should be given some discretion on how much they can charge under the levy?

- Yes ✓
- No
- Maybe

Please outline your reasons in the box below

Local Authorities should be given discretion regarding how much they charge. The charge should be set at a reasonably high level with open and transparent accounts to justify the expenditure. It should be set at a level which discourages opening beyond midnight. The costs of extra policing and overtime should certainly be included. It could also include the provision of a fund to help local charities, businesses or residents in the area cover their extra night time costs such as security shutters, broken windows or vandalism.

Guidance could be issued on how the scheme would operate.

Dealing with the problems of late night drinking (part 3)

Consultation Question 16: Do you think it would be advantageous to offer reductions for the late night levy to premises which are involved in schemes to reduce the additional policing costs such as Best Bar None?

- Yes
- No
- Maybe ✓

Please outline your reasons in the box below:

Yes, but only to a limited extent in order to generally discourage opening after midnight.

Consultation Question 17: Do you agree that the additional costs of taxi-marshalling or street cleaning should be funded by the late night levy?

- Yes ✓
- No
- Maybe

Please outline your reasons in the box below

Please see our answer to question 15a, which argues that other additional costs should also be funded.

Amending the statutory guidance which accompanies the Licensing Act to make it clear that measures to limit opening hours can be considered

Proposal (Paragraph 6.17)

- Amend guidance to make it clear to local areas that they can make decisions about the most appropriate licensing strategy for their area.
- Enable licensing authorities to have flexibility in restricting or extending opening hours to reflect community concerns or preferences.

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

- Yes ✓
- No
- Maybe

Please explain why in the box below:

Yes, although we propose that it would be far simpler to consider having lower fixed closing times nationwide as this would provide a clear and straight forward system for every area. Introducing local authority optional discretion could make the system too complicated. The impact assessment to this consultation shows that the 24 hour flexible drinking regime does not work. The impact assessment states that: “Since the introduction of the Licensing Act there has been growing concern that the original vision of a vibrant “café culture” has failed to materialise, with alcohol related crime estimated to cost between £8-13bn a year.”²⁷

The aim of flexible opening hours was to avoid the concentration of dispersal problems, presumably after pub closing times which used to be at 11pm. However, sadly a 24 hour flexible drinking culture has created many more problems than it has solved. It has simply meant that trouble continues throughout the night instead of being over before midnight and has helped to create a binge drinking culture.

Temporary Event Notices

Proposal (Paragraphs 7.04-07)

- Substantial overhaul of the system of TENs to give more time for objections to be raised, enable all responsible authorities to object, increase the notification period and reduce the number that can be applied for by personal licence holders and in the same vicinity.

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?

It would be a good idea. However, the changes do not seem to allow for local communities to have any input in the proposed amended TENs.

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

²⁷ Statement from the Impact Assessment to this consultation.

It would be a good idea to increase the time period to object.

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

The established premises holders should have a greater capacity to determine events in the future.

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

It would be better if it was expected that they would do so, unless the existing licence conditions are not appropriate due to the circumstances of a TEN. There should be the provision to also apply extra or varied conditions to ensure that the concerns of local communities are considered so that the hours for TENs are reasonable.

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?

This would be a good idea to avoid a TEN becoming more of a permanent fixture as a result of a number of successive temporary events.

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

The consultation states that: “Currently, it is possible for a field (for example) to have an unlimited number of TEN applications, with each TEN permitting up to 499 persons at each one. The Government proposes to amend the legislation to ensure that only one TEN would be able to be applied for in events such as this.”²⁸

The suggestion above is unclear. If it means that there is one Ten per location per event, then

²⁸ See paragraph 7.07 of this consultation.

this would seem reasonable. However, if this field is located close to residential premises and the TENs are for events that are held late at night, consideration could be given to restricting event TENs to no more than 12 per year, if local resident objections are received.

Protecting children from the harm of alcohol

Proposals (Paragraph 8.05-06)

- Introduce tougher sentences for persistent underage sales.
- Extend the period of voluntary closure that can be given by the police as an alternative to prosecution

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 ✓
- No
- Maybe

Please give your reasons in the box below

Yes, the penalties for under age selling should increase to help to prevent its occurrence.

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?

The appropriate upper limit should be two weeks. The impact a closure would have on a business would of course be affected by when the closure took effect. For example, during a quiet period when the proprietor was on annual leave, it would have less of an impact than a busier period over Christmas and New Year. Closure is an alternative to a prosecution which may result in a fine. The trader would have to balance the loss of profit during closure against the risk of a fine. It is agreed that the minimum and upper limit for closure should be flexibly applied by the police, as they are in the best position to assess its local impact.

Proposal (Paragraph 8.07):

- Amend the legislation to ensure that all premises found to be persistently selling alcohol to children will have their licence reviewed, regardless of whether they have opted for voluntary closure or prosecution.

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 is an excellent idea except that it is unclear what the term “persistently” selling alcohol to children means and this should be properly defined.²⁹ The presumption of the review should be to either revoke such a licence or to make it a licence condition that any further single breach will result in an automatic review with the presumption of revocation.

The recognition of the need to protect children is commendable. In our opinion, due to concerns of local communities regarding lap dancing clubs and the need to protect the public and the performers, it would be helpful if any breach of licence conditions by such clubs would also result in an automatic review. The review here should be based on the presumption of revocation for breach of any of the licence conditions.

Banning below-cost sales

Proposal (Paragraph 9.03)

- Ban the sale of alcohol below cost price.

Legislative options for banning below-cost sales

Consultation Question 24: For the purpose of this consultation we are interested in expert views on the following. Please give your views in the box below each point.

a. Simple and effective ways to define the 'cost' of alcohol

The definition of below cost being proposed by Councils in the Greater Manchester area is to stop supermarkets and pubs selling below 50p per unit.³⁰

²⁹ For example, on more than one occasion in any three month period or three times within any six month period.

³⁰ See Manchester Evening News 11 August 2010 : http://menmedia.co.uk/manchestereveningnews/news/s/1313578_david_cameron_why_i_back_ban_on_cheap_booze

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

Enforcing such a ban would be easier if any ban was nationwide, to prevent people travelling to areas outside of the ban to purchase alcohol.

c. The feasibility of using the Mandatory Code of Practice (Mandatory Licensing Conditions) Order 2010 to set a licence condition that no sale can be below cost, without defining cost.

If the Licensing Act is being overhauled there appears to be no reason why a mandatory condition cannot be part of primary law in the Act itself, rather than in secondary regulations.³¹

Reducing burden and bureaucracy of licensing and covering its cost (part I)

Increases in licensing fees

Proposal (Paragraph 10.01)

- Enable licensing authorities to increase licence fees so that they are based on full cost recovery.

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

Yes, there is no reason why such fees should be subsidised by local council tax payers.

Automatic revocation of licence for non-payment of fees.

Proposal (Paragraph 10.03)

- Enable licensing authorities to revoke licences due to non-payment of fees.

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

- Yes ✓

³¹ See for example other mandatory licence conditions in sections 19 to 21 of the Licensing Act 2003:

http://www.opsi.gov.uk/acts/acts2003/ukpga_20030017_en_3#pt3-pb2-11g20

- No
- Maybe

Please explain why in the box below:

Yes, applying such a sanction is likely to result in fewer unpaid fees. It would help to keep the costs down of recovering unpaid annual fees.

Reducing burden and bureaucracy of licensing and covering its cost (part 2)

Deregulation

In April 2010, the previous administration enacted a Mandatory Code of Practice (Mandatory Licensing Conditions) Order 2010 for Alcohol Retailers, which was intended to be introduced in two stages. The first stage, which took place in April 2010, imposed conditions on licensed premises to:

- a) Ban irresponsible promotions in the on-trade
- b) Ban dispensing alcohol directly into the mouths of customers
- c) Ensure that free tap water was available in all licensed premises in the on-trade (Paragraph 10.04).

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?

- Yes ✓
- No
- Maybe

Please explain why in the box below

We are not able to assess its practical impact, as we are not in the trade. However, making free tap water available could help those who wish to regulate their alcohol intake.

The legislation for the Mandatory Code contained two further conditions for licensed premises. These will be introduced on 1 October 2010. These conditions were delayed to give business more time to prepare and will mandate all licensed premises to:

- d) Ensure they have an age verification policy in place
- e) Ensure they are able to offer smaller servings of beer, wine and spirits (Paragraph 10.05).

As the regulations have been enacted, it is not possible to prevent d) and e) coming into force in October. However, the Government believes strongly that regulation should only be used as a last resort, and that alternatives to regulation should be used wherever possible. We want to take the opportunity of this consultation to give people the chance to comment on the necessity, cost, and impact of the provisions outlined in the mandatory code (Paragraph 10.06).

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

- Yes
- No ✓
- Maybe

Please explain why in the box below:

Regarding (d) an age verification policy helps to stop under-age drinking and protects the young.

Regarding (e) smaller servings of beer, wine and spirits gives consumers the choice to drink less.

The Government is also interested in further de-regulating the Licensing Act in order to reduce the administrative burden both on business and licensing authorities. For example the application forms for both a premises licence and a TEN could be reduced, and the requirement on the licensing authority to determine and publish a statement of licensing policy every three years could be removed (Paragraph 10.07).

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?

- Yes
- No ✓
- Maybe

Please explain why in the box below:

No, we would strongly object to such an idea and believe that the Licensing Act should be more prescriptive not less if the Licensing Act is to be rebalanced. There are already problems which have been outlined in our previous answers which highlight the lack of clarification in the Licensing Act (for example on TENs). Much expense has been needed due to the need for case law because of the omission of provisions in the Licensing Act on appeals.³²

The forms and requirements for applications for a licence or to vary a licence are already too easy to complete and may be completed with little or no thought. The system is already geared in favour of the applicant.

The Local Authority statement of licensing policy does need to be considered every 3 years to keep pace with and be responsive to local changes. All policies should include a provision to ensure that there is a presumption in favour of not granting licence applications near to or on route to schools or Places of Worship.

³² See for example the case of the Chief Constable of Nottinghamshire Police v Nottinghamshire Magistrates' Court [2009] EWHC 3182 (Admin). <http://www.bailii.org/ew/cases/EWHC/Admin/2009/3182.html>