



Home Office

# **RESPONSES TO CONSULTATION: REBALANCING THE LICENSING ACT**



## MINISTERIAL FOREWORD



I am grateful to all those who took the time to respond to the recent public consultation 'Rebalancing the Licensing Act: A consultation on empowering individuals, families and local communities to shape and determine local licensing'.

The Government believes that local communities should have a greater role in determining local licensing and having considered the responses to the consultation, we remain committed to rebalancing the Licensing Act in favour of local communities. The package of measures that we are introducing through the Police Reform and Social Responsibility Bill will provide local communities with the tools they need to establish and manage the type of night-time economy they want and will ensure that local residents' views and concerns are heard and considered.

We recognise the significant contribution that licensed premises can make to our local communities and acknowledge that the majority of these premises are well-run businesses. However, tougher measures are needed to tackle the small minority of irresponsible licensed premises, such as those who continue to sell alcohol to children. These measures have been designed to be used flexibly by licensing authorities to avoid penalising the majority of premises who do sell alcohol responsibly.

The policies being introduced will enable police and licensing authorities to more effectively address alcohol-related crime and disorder in the night-time economy. However, tackling alcohol-related crime and disorder is not just something that can be tackled centrally and is something for which both individuals and local communities need to accept greater responsibility. The alcohol measures mark a fundamental shift away from central interference in licensing to a greater emphasis on local responsibility and accountability.

We are convinced that tackling alcohol-related crime and disorder should not be at the expense of responsible businesses. The effective use of schemes such as Business Improvement Districts and the national award scheme, Best Bar None, have demonstrated the positive impact that working together within communities can have. Whilst introducing these measures in the Police Reform and Social Responsibility Bill, we remain committed to encouraging greater partnership working whilst continuing to look for ways to reduce the regulatory burden on business and local authorities.

A handwritten signature in black ink, appearing to read 'James Brokenshire'.

**James Brokenshire MP**

Parliamentary Under Secretary of State for Crime Prevention.

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# INTRODUCTION

1. The introduction of the Licensing Act 2003 and 24 hour licences promised to introduce a continental-style 'café-culture'. Instead, in 2009/10 nearly half of all violent crime was fuelled by alcohol<sup>1</sup> and the police are fighting a constant and expensive battle against alcohol fuelled crime and anti-social behaviour. According to the 2009/10 British Crime Survey (BCS), 50% of victims of violent crime believed the offender to be under the influence of alcohol<sup>1</sup>. This proportion has remained consistently high despite significant overall reductions in the levels of violent crime. One fifth of all violent incidents take place in or around a pub or club<sup>2</sup>. The majority (64%) of all violence occurs in the evening or at night and just under half occurs at the weekend (Friday 6pm until Sunday 6am)<sup>2</sup>. Nearly a quarter of BCS respondents considered people being drunk or rowdy in public places to be a very or fairly big problem in their local area<sup>1</sup>.
2. This Government is committed to ensuring that alcohol is no longer the driver of crime and disorder that it has been over the last decade. In 2009/10, almost one million violent crimes were alcohol related<sup>1</sup>. Hospital admissions related to alcohol are increasing massively. In 2009/10 there were over 1 million alcohol-related hospital admissions - and the figure is rising by around 78,000 each year<sup>3</sup>. In addition alcohol accounts for an estimated 40% of A&E attendances. This level of harm is unacceptable and this is why the Government committed in its Coalition Agreement to a clear programme of reform around alcohol licensing to tackle the crime and anti-social behaviour (and resultant health harms) that too often are associated with binge drinking in the night time economy.
3. In 2009, around half (51%) of pupils said that they had ever drunk alcohol and the mean weekly consumption was 11.6 units<sup>4</sup>. Whilst the proportion of pupils who are drinking is falling it is still a cause for concern because of the strong associations between alcohol use and truancy, drug use and other negative outcomes such as teenage pregnancy.
4. The total estimated cost of alcohol related crime is £8bn to £13bn<sup>5</sup>. This estimate takes into account the costs in anticipation of crime, the direct physical and emotional costs to victims, the value of lost output, and the costs to the health service and Criminal Justice System. Policing the night time economy is hugely resource intensive. In a recent study by the Home Office 22 out of 48 police authorities (46%) identified the night time economy as a main cause of their overtime payments<sup>6</sup>.
5. In particular, the Government set out the following five Coalition Commitments:
  - We will overhaul the Licensing Act to give local authorities and the police much stronger powers to remove licences from, or refuse to grant licences to, any premises that are causing problems.
  - We will allow councils and the police to shut down permanently any shop or bar found to be persistently selling alcohol to children.

1 Crime in England and Wales 2009/10: <http://rds.homeoffice.gov.uk/rds/pdfs10/hosb1210.pdf>

2 Crime in England and Wales 2009/10, supplementary tables- nature of violent crime:  
[http://rds.homeoffice.gov.uk/rds/pdfs10/violent\\_crime\\_0910.xls](http://rds.homeoffice.gov.uk/rds/pdfs10/violent_crime_0910.xls)

3 North West Public Health Observatory provisional figures 2009/10 <http://www.nwph.net/alcohol/lape/download.htm>

4 Smoking, drinking and drug use among young people in England in 2009:  
[http://www.ic.nhs.uk/webfiles/publications/Health%20and%20Lifestyles/sdd2009/SDD\\_2009\\_Report.pdf](http://www.ic.nhs.uk/webfiles/publications/Health%20and%20Lifestyles/sdd2009/SDD_2009_Report.pdf)

5 Impact assessment for the consultation on a mandatory code for the alcohol retail industry. Home Office, 2008.  
<http://www.ialibrary.berr.gov.uk/uploaded/IA%20Alcohol%20Mandatory%20Code.pdf>

6 Understanding overtime in the police service, February 2010:  
<http://library.npia.police.uk/docs/homeoffice/police-overtime.pdf>

- We will double the maximum fine for underage alcohol sales to £20,000.
  - We will permit local councils to charge more for late-night licences to pay for additional policing.
  - We will ban the sale of alcohol below cost price.
6. The recent public consultation 'Rebalancing the Licensing Act- A consultation on empowering individuals, families and local communities to shape and determine local licensing' ran for six weeks between 28th July and 8th September and invited our key partners and the general public to comment on a number of policy proposals to deliver the Coalition Commitments outlined above. We also held seven regional consultation events across England and Wales (six of these included separate morning and afternoon events) and seven national consultation events in central London to give our key partners the opportunity to discuss the proposals in more detail.
  7. We are grateful to all those who took the time to respond to the consultation and to those who attended one of our consultation events. We received 1,089 formal responses to the consultation and an additional 2,938 campaign responses. In total 517 individuals attended one of the regional consultation events and an additional 113 people attended one of the national consultation events. The feedback from both the regional and national consultation events was collated and has been fully considered along with the formal consultation responses received. The Home Office commissioned an independent analysis of the consultation responses and outputs from the consultation events. Key findings from this analysis are included in this response and the full independent analysis of consultation responses can be found in Annex A. Consultation with key interested parties began in June 2010. A number of pre-consultation meetings were held at the Home Office. These meetings were well attended and include representatives from all key interest groups.
  8. We are also grateful to those members of the licensed trade who took the time to attend our consultation events and or submit a formal consultation response. It is not our intention to penalise responsible businesses. Indeed, we recognise the importance of the industry to the economy. The industry as a whole contributes around £8.5bn to the Exchequer through excise duty alone, and just over 180,000 premises have a licence to sell alcohol. We are committed to minimising regulatory burdens on businesses and we have sought to balance any additional regulation with commitments to repeal unnecessary or overly bureaucratic processes and regulation.
  9. Many respondents to the consultation were concerned with the truncated nature and timing of the consultation over a holiday period. Whilst we recognise the 6 week consultation was not as long as the guidance recommends, we took steps to ensure that as many people as possible were able to take part in the consultation either by submitting a formal response or attending one of our consultation events. Officials held additional regional events in London and Nottingham to supplement the scheduled events in London, Blackpool, Birmingham, Cardiff and Newcastle. Pre-consultation with our key partners started in June 2010.

## GIVING MORE LOCAL POWERS TO REFUSE AND REVOKE LICENCES

10. In our Coalition Agreement, we committed to ‘overhaul the Licensing Act (2003) to give local authorities and the police much stronger powers to remove licences from, or refuse to grant licences to, any premises that are causing problems’. Chapter five of the consultation document outlined a series of proposals to deliver this commitment.
11. We have considered these findings carefully, along with views raised at the consultation events. We intend to use the Police Reform and Social Responsibility Bill to introduce a package of measures to overhaul the Licensing Act 2003, to:
  - 1) Give licensing authorities the power to refuse licence applications or apply for a licence review without requiring relevant representations from a responsible authority. This will help licensing authorities to pro-actively target irresponsible businesses. A large number of consultation respondents supported this proposal. Some raised concerns this could lead to procedural unfairness, however we are confident that this will not be the case since there will be a separation of responsibilities within the licensing authority to ensure that different functions are not exercised by the same individuals. This regime is similar to that which operates under the Gambling Act 2005 and works well.
  - 2) Lower the evidential hurdle for licensing authorities when making licensing decisions by requiring that they make decisions which are ‘appropriate’ rather than necessary for the promotion of the licensing objectives. This will help ensure that licensing authorities are able to better reflect the needs of the local area. This proposal was also supported by large numbers of respondents. Whilst the evidential hurdle is being lowered, licensing authorities will still be required to ensure that their decisions are evidence-based and linked to the licensing objectives.
  - 3) Increase the opportunities for local residents or their representative groups to be involved in licensing decisions by removing the requirement to show vicinity. This means that any person, body or business will be able to make a relevant representation regardless of where they live. Although criticisms were raised during the consultation that this proposal could lead to an increase in frivolous and vexatious representations, many respondents welcomed greater community involvement in the licensing process and acknowledged that licensed premises can have an effect beyond their immediate vicinity. Whilst we acknowledge the criticisms, we will mitigate any adverse impacts by amending the guidance to set out more clearly what is classed as relevant, frivolous and vexatious representation. We believe that this proposal will encourage greater community involvement in local licensing decisions. The Government will require licensing authorities to publish key information from licence applications online, giving residents more clarity on what is happening in their area and an early opportunity to raise concerns, support or objections with regard to licence applications or reviews. As part of the transparency agenda, the Government will continue to work with local authorities to encourage greater publication of licensing data online in an open and standardised format.
12. Enable more involvement of local health bodies in licensing decisions by designating Primary Care Trusts (PCTs, or their future equivalents) in England and Local Health Boards (LHB) in Wales as a responsible authority. Consultation respondents were broadly supportive of this proposal and recognised the value of considering information such as local A&E statistics when making licensing determinations although some respondents questioned

the ability of health bodies to provide representations specific to individual premises. Whilst we acknowledge this, we believe it is vital for PCTs and LHBs to be able to influence licensing decisions by making relevant representations. Such impacts may include public safety issues, reflected in stretching A&E resources and over-burdening of staff. These representations will still need to be made in relation to the existing licensing objectives and we are confident that local health bodies will be able to do this. We also see merit in the proposal to make the prevention of health harm a material consideration in the Licensing Act 2003. We want to ensure that this is considered alongside wider work to address the harm of alcohol to health. Accordingly, we do not intend to legislate at this stage but will consider the best way to do so in the future.

13. In addition to the proposals in the Police Reform and Social Responsibility Bill, we will amend the Statutory Guidance to make it clear to licensing authorities that there should be a presumption that all reasonable recommendations from the police should be accepted unless there is clear evidence to the contrary.
14. The Statutory Guidance will also be amended to require licence applicants to give further consideration to the interests of the local community when setting out the steps they will take to promote the licensing objectives. Applicants will be required to provide contextual information on issues such as the local area's social-demographic characteristics, specific local crime and disorder issues and an awareness of the local environment. We do not intend to be prescriptive about the specific information applicants should provide and will work with the trade to consider the best way to introduce this additional requirement. This is an important step in improving the licensing process so that applicants are required to consider the needs and benefits of the community that their business operates within.
15. Following careful consideration of the responses to the consultation on the proposals to amend the appeals process and the proposal to make decisions of licensing authorities apply immediately and unless reversed on appeal, we have listened to the concerns raised and have decided they will not be taken forward at this stage. Consultation respondents raised concerns regarding the potential negative impact these proposals would have on the procedural fairness of the licensing process.

## DEALING WITH THE PROBLEMS OF LATE-NIGHT DRINKING

16. This Government is committed to setting a framework where licensing authorities are properly able to address the pressures caused by excessive late-night drinking and the 24 hour licensing culture. Too many residents and resident groups have told us that the night-time economy makes certain parts of the town no-go-areas at night and anti-social behaviour associated with late night drinking extends into residential communities not just around licensed premises. We are committed to ensuring that licensing authorities and enforcement agencies are given the right tools to address the problems in their area whilst promoting a healthy night-time economy to benefit business and the community that they serve.
  - 1) Local problems in the night-time economy should be addressed with local solutions, so we will ensure licensing authorities and enforcement agencies are properly empowered. We will use the Police Reform and Social Responsibility Bill to introduce powers to allow licensing authorities to charge a late-night levy to pay for policing the night-time economy

and other services related to the consequences of alcohol on the night-time economy such as taxi marshalling or street wardens.

- 2) In areas where licensing authorities choose to apply the levy, it will be charged annually to those in the on and off-trade who have a licence to sell alcohol on any day of the week during the time period which a licensing authority decides will apply in their area. The maximum period that the levy can apply to will be between midnight and 6am, but licensing authorities will have the discretion to apply the levy to a shorter time period within those perimeters.
- 3) The levy will be set at a national level using the existing rateable value bands for the annual licence fee. Licensing authorities will have the discretion to offer exemptions or discounts in certain situations which will be set out in regulations. Examples of this might be membership of schemes which mitigate the effects of alcohol related crime and disorder or that do not contribute to additional policing costs as a result of the sale of alcohol.
- 4) The burden to licensing authorities of collecting the levy will be minimised by using the same process as that used for collecting the annual licence fee. The charges will be set out in secondary legislation.
- 5) The late-night levy will not apply to Temporary Event Notices. This will ensure that licensed premises that do not routinely trade beyond midnight are able to open late for a limited number of events (for example, New Years Eve celebrations) without having to pay the late-night levy.
- 6) We will use the Police Reform and Social Responsibility Bill to extend Early Morning Restriction Orders so they can be applied flexibly for time periods between midnight and 6am. This proposal received strong support in the consultation and will give licensing authorities the freedom to respond to the needs of their local area. Licensing authorities will be able to flexibly apply Early Morning Restriction Orders to ensure that responsible businesses that open after midnight are not unfairly penalised. In addition we will amend the Statutory Guidance to make it clear to local areas that they can make decisions about closing times. The guidance will ensure that licensing authorities can reflect the needs of their local area by using measures such as fixed closing times, staggered closing times and zoning where they consider them to be appropriate. Again, this proposal received widespread support in consultation responses.
- 7) Following overwhelming support from respondents to the consultation, we will use the Rights and Freedoms Bill to repeal the unpopular Alcohol Disorder Zones.
- 8) We will amend the Statutory Guidance to lower the evidential hurdle for Cumulative Impact Policies to allow licensing authorities to have more control over outlet density. Having listened to the views of consultation respondents, we will ensure that the Guidance sets out clearly where Cumulative Impact Policies should be used to ensure that these are implemented fairly.



## TEMPORARY EVENT NOTICES

17. We are seeking to substantially overhaul the system for Temporary Event Notices (TENs) so that existing loopholes can no longer be exploited by unscrupulous operators, whilst ensuring the process is not bureaucratic for small voluntary and community groups. In the consultation document we sought feedback on the best way to do this. Following careful consideration of the responses to the consultation on extending the right to allow all responsible authorities to object to a TEN, we have decided to extend the right to object to a TEN to the environmental health authority only. This will allow objections to be made on the grounds of noise, something which residents associations tell us is currently a problem, whilst ensuring the TENS process does not become overly bureaucratic.
18. We will allow the police and environmental health officers to object to a TEN on the basis of all of the licensing objectives, rather than just the prevention of crime and disorder. Therefore objections will be able to be made on grounds of prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm. We will also extend the time allowed for the police and environmental health officers to object to a TEN to three working days (from the current two) rather than the five days proposed in the consultation document.
19. The consultation sought views on the notification period that applicants should be required to give in advance of their event. The consultation suggested that the notification period should be extended from the current requirement to give ten days, so that licensing authorities have sufficient time to convene a hearing in the event that one of the responsible authorities objects. However, we have decided to keep the notification period to ten days to ensure that the burden on business is not increased. We have also therefore decided not to implement a system where licensed premises have a longer notification period than other applicants. We believe that there will still be sufficient time for objections by allowing 3 days for this and have therefore tried to strike a balance.
20. We also consulted on the practicalities of allowing licensing authorities the discretion to apply existing licence conditions to a TEN to stop the abuse of the TENS system to avoid their licensing conditions. Although concerns were raised by a small number of respondents about the impact of this proposal on the licensed trade, we do not believe that this will penalise responsible businesses and agreed with the large numbers of respondents who supported this proposal that licensing authorities and responsible authorities should be given this discretion. Therefore we intend to give licensing authorities discretion to apply existing licence conditions to a TEN.
21. We are aware that many community groups and members of the public sometimes find it difficult to give ten days notice for an event. There are legitimate reasons why a business may require a TEN to be submitted less than 10 days before the event, for example a circus site may be waterlogged when the circus arrives so an alternative site might be required or someone may be unable to hold an event due to bereavement. Currently the licensing authority cannot accept any late TENs and all TENs submitted late are automatically invalid. We therefore intend to allow TENs to be given to licensing authorities with less than 10 working days notice, but at least 5 working days before the event. This will still ensure proper scrutiny, but if either the police or environmental health officers object the event would be unable to proceed without the benefit of a hearing. There will be an annual cap on the number of late TENs permitted, personal licence holders will be allowed a maximum of 10 a year and non personal licence holders allowed a maximum of 2 a year as we do not want the use of late TENs to become normal practice.

22. We also intend to balance the additional burden that these TENs proposals may introduce by relaxing the current limits on the duration of temporary events. Organisations such as theatres and circuses have told us that they would often prefer to run events for a week, but are prevented from doing so by the current duration limit of 96 hours, resulting in a loss of business and income. We therefore intend to extend this limit to 168 hours. We will also increase the total cumulative period in any one year for which a single premises can be used for activities in accordance with a TEN from 15 days to 21 days.
23. We will use the Police Reform and Social Responsibility Bill to make these changes to Temporary Event Notices.
24. We noted the arguments of those who opposed the proposal to reduce the number of TENs that can be applied for by a personal licence holder to 12 per year and particularly the impact that the proposal will have on circuses, and have therefore decided that this proposal will not be taken forward. We have also decided not to take forward the proposal to restrict the number of TENs that can be applied for in the same vicinity, having been persuaded by arguments that this proposal could restrict numbers of community events organised by local personal licence holders such as village landlords.

## PROTECTING CHILDREN FROM THE HARM OF ALCOHOL

25. This Government is committed to ensuring that children are protected from the harm of alcohol. We committed in our Coalition agreement to double the maximum fine for persistent underage sales to £20,000 and to allow licensing authorities and the police to permanently shut down any shop or bar found to be persistently selling alcohol to children. To achieve this we intend to use the Police Reform and Social Responsibility Bill to double the maximum fine for persistent underage sales and extend the minimum period of voluntary closure that can be given for persistent underage sales from a maximum of 48 hours to a minimum closure period of 48 hours and maximum closure period of 2 weeks.
26. The consultation invited comments on a suitable lower and upper limit for the period of voluntary closure that could be flexibly applied by police as an alternative to prosecution for persistent under-age selling. A lower-limit of 168 hours was proposed in the consultation document. There were mixed views both at the consultation events and from the formal responses to this proposal. Large numbers of respondents suggested a lower-limit of 168 hours was too high and that the current 48 hour closure period should be retained. However, large numbers also suggested that there should be a range of closure periods that can be applied flexibly depending on how serious the circumstances are and considering factors such as the size of the premises and likely impact of the closure. Findings were clearer when respondents were asked to suggest a suitable upper-limit for the period of voluntary closure, with the majority of respondents supporting setting this at 2 weeks or more.
27. The proposal to make licence reviews automatic for those found to be persistently selling alcohol to children received a lot of support in the consultation, although many concerns were raised that using primary legislation to implement this policy would remove discretion from licensing authorities, police and trading standards. We will therefore use the Statutory Guidance which accompanies the Licensing Act 2003 to ensure that licensing authorities treat the offence seriously and on review, the presumption will be that licence holders are

given the maximum sanction of licence revocation, unless there is clear evidence to the contrary. We will also work with the Sentencing Council and the Crown Prosecution Service to encourage greater use of existing powers to prosecute those found guilty of persistent underage selling and to use the full range of sentences available.

28. In addition, we want to ensure that businesses have a clear approach to preventing underage sales. We will work in partnership with the alcohol industry to ensure that voluntary schemes such as Challenge 21 and Challenge 25 become the norm. Such schemes should be clearly publicised and regularly monitored through voluntary test-purchase campaigns. We will take forward these proposals as part of the broader Responsibility Deal.

## **BANNING BELOW COST SALES**

29. Chapter 9 of the consultation sought views on simple, effective ways to define the ‘cost’ of alcohol and effective ways to enforce a ban on sales below cost. We are grateful to all those respondents who provided detailed responses to the questions outlined in chapter 9 and to those members of the licensed trade who met with officials to explore the options. Responses have indicated a wide range of views on the subject with no overall consensus. Many respondents raised issues of commercial confidentiality and the feasibility of enforcing a ban which did not contain a clear and simple definition of cost.
30. We are committed to taking forward proposals to implement the ban on sales below cost without delay; however they will not form part of the Police Reform and Social Responsibility Bill.

## **REDUCING BURDEN AND BUREAUCRACY OF LICENSING AND COVERING ITS COST**

31. We are committed to reducing the burden and bureaucracy of licensing and striking the right balance between the requirements on businesses, the cost to the taxpayer and helping the police and other enforcement agencies address alcohol related crime and disorder. We also intend to enable licensing authorities to set licensing fees based on full cost recovery.
32. We will use the Police Reform and Social Responsibility Bill to :
- 1) Enable licensing authorities to suspend licences due to non-payment of fees. This will provide a much stronger incentive for businesses to pay their fee in a timely manner and save licensing authorities the time and cost of pursuing non-payment through the courts. This measure will not impact on responsible businesses that pay their licence fees on time. This proposal received strong support from the vast majority of consultation respondents.
  - 2) Change the requirement for a licensing authority to publish their Licensing Policy Statement every three years to every five years (if they have not done so in the interim). This was a suggestion that came from the consultation events.

33. We have decided not to repeal the mandatory code conditions in the Police Reform and Social Responsibility Bill<sup>7</sup>, but will review the code within 12 months to assess the impact it has had, particularly with the view to reducing unnecessary burden on business. Consultation respondents were generally opposed to repealing all of the mandatory conditions.
34. We will also update the list of 'relevant offences' in Schedule 4 to the Licensing Act 2003 to include offences of attempting to commit and conspiracy to commit existing relevant offences and failure by drivers to co-operate with a preliminary test in relation to alcohol, impairment or drugs.

## **CONCLUSION**

35. The changes we intend to make through primary legislation are just the first step in achieving our Coalition commitments on alcohol. The 'café culture' that the Licensing Act 2003 was expected to deliver has failed to materialise and instead our town centres have become blighted by crime and disorder driven by irresponsible drinking. We are committed to overhauling licensing in England and Wales so that alcohol is no longer the driver of violent crime and anti-social behaviour that it is today.

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<sup>7</sup> The mandatory code conditions to ban irresponsible promotions in the on-trade; ban dispensing alcohol directly into the mouths of customers; and, ensure that free tap water is available in all licensed premises in the on-trade were enacted in April 2010. The mandatory conditions to require all licensed premises to ensure they have an age verification policy in place and ensure they are able to offer smaller servings of beer, wine and spirits were enacted in October 2010.

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