



Home Office

# **ANALYSIS OF CONSULTATION RESPONSES**

AN INDEPENDENT REPORT TO THE  
HOME OFFICE ALCOHOL STRATEGY UNIT  
BY TONIC CONSULTANTS



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# 1. EXECUTIVE SUMMARY

## INTRODUCTION

In the Coalition Agreement<sup>1</sup> a number of commitments regarding reducing alcohol-related harm were set out. These commitments were:

- “We will ban the sale of alcohol below cost price
- 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
- We will double the maximum fine for under-age alcohol sales to £20,000
- We will permit local councils to charge more for late-night licences to pay for additional policing”<sup>2</sup>

The Home Office ran a public consultation for six weeks between 28th July and 8th September 2010 inviting the general public and key interested parties involved in the alcohol industry, policing, enforcement, licensing and health to have their say on a series of policy proposals to deliver these commitments. The proposals were outlined in more detail in a consultation document, ‘Rebalancing the Licensing Act: A consultation on empowering individuals, families and local communities to shape and determine local licensing’, which is available to read in full at: <http://www.homeoffice.gov.uk/publications/consultations/cons-2010-licensing-act/alcohol-consultation?view=Binary>.

## CONSULTATION ACTIVITY

During the consultation process, people were invited to submit formal responses using a proforma either online or on paper. This was supplemented by an opportunity for key interested parties to attend a series of National and Regional Events. The Home Office received a total of 1,089 individual responses to the consultation – 370 responses came from members of the public; 164 responses came from those involved in the retail or manufacture of alcohol or their trade associations; 387 responses came from those involved in enforcement, licensing and health; and 117 responses came from other groups including legal specialists, those involved in the entertainment industry, village halls, charities and a range of other organisations.

A series of seven Regional Events were held across England and Wales, which gave interested parties the opportunity to hear more about the proposals and to discuss their responses in workshops. In total, 517 people attended these events. Seven National Events were held during the consultation to give key interested parties an opportunity to discuss their thoughts on the proposals. A total of 113 people attended these events. The summary of discussions at the Regional Events and National Events is offered as further contextual information in this analysis.

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<sup>1</sup> *The Coalition: Our Programme for Government* (HM Government, 2010)

<sup>2</sup> *Ibid*

## ANALYSIS METHODOLOGY

We have conducted an independent analysis of the responses to this consultation on behalf of the Home Office and have produced this report summarising the key findings.

We have conducted a summary analysis of all responses received. All responses to each question were then analysed and coded. As a guiding principle, for each question the most frequently occurring responses were identified and reported accordingly.

Quotes from the main respondent groups have been used to illustrate responses to each question. Where a question had been discussed at the National Events, the main points from these discussions were captured by Home Office officials and a summary of these are also presented to add further contextual information. In addition, where a question was discussed at the Regional Events, we have also included the key themes occurring in these discussions. The Regional Events captured discussion from self entered responses from tables of multiple respondents and respondent types – therefore comments cannot be attributed to specific groups. It is worth noting that not all questions were discussed at the National and Regional Events.

The overall analysis conducted for the purposes of this report is essentially a quantitative analysis. Figures given in graphs are shown to illustrate the percentage of responses that supported the proposal (“Positive” responses), those that opposed the proposal (“Negative” responses), and those that did not give a firm position for or against a proposal (“Neutral” responses).

A number of in-depth responses were received providing technical data and legal responses – Government officials will also consider these separately in addition to them being included in this analysis. This includes technical responses from solicitors and licensing authorities regarding licensing laws and their application, and data regarding the impact and methods that could be used to establish and enforce a ban on below cost selling,

Responses from one campaign and two self-conducted survey results were also received. These have been considered as single responses along with comments from other individual responses. The emphasis in our analysis was on the content of the campaign response, not on the number of submissions they received.

## KEY FINDINGS

There was a good response rate to the consultation, providing a rich source of data, opinions and views from a wide range of interested parties and members of the public.

Many respondents, from all respondent types, expressed their dissatisfaction with the short timescales allowed for this consultation, and a number expressed a view that insufficient detail was provided to allow them to respond properly to the proposals.

A broad theme that emerged was that respondents were in support of measures to empower local communities and strengthen their input into the licensing process.

From the total responses received, there were **positive responses** from a majority (over 50%) for the proposals to:

- Make licensing authorities into responsible authorities (61%)
- Reduce the burden of proof for licensing authorities (55%)
- Require licensing authorities to accept all representations, notices and recommendations from the police unless there is clear evidence that these are not relevant (57%)
- Make community groups interested parties under the Licensing Act, with the main suggestions being for this to include local Residents Associations and Neighbourhood Watch schemes (65%)

- Amend the legislation so that the decision of the licensing authority applies as soon as the premises licence holder receives the determination (62%)
- Extend the flexibility of Early Morning Restriction Orders to reflect the needs of the local area (70%)
- Repeal Alcohol Disorder Zones (60%)
- Give the local authority some discretion on how much they can charge under the Late Night Levy (65%)
- Fund the additional costs of taxi-marshalling or street cleaning through the Late Night Levy (56%)
- Give more autonomy to local authorities regarding closing times in order to cut alcohol related crime (68%)
- Allow all responsible authorities to be able to object to a TEN on all of the licensing objectives (58%)
- Give the police (and other responsible authorities) five working days to object to a TEN (83%)
- Increase the notification period and make it longer for those venues already holding a premises licence (54%)
- Give licensing authorities the discretion to apply existing licence conditions to a TEN (80%)
- Reduce the number of TENS that can be applied for by a personal licence holder to 12 per year (53%)
- Restrict the number of TENS that can be applied for in the same vicinity (67%)
- Make licensing reviews automatic for those found to be persistently selling alcohol to children (71%)
- Increase licence fees based on full cost recovery (66%)
- Automatically revoke the premises licence if the annual fees have not been paid (72%)
- De-regulate the Licensing Act by either removing or simplifying elements (55%)

From the total responses received, there were **negative responses** from a majority (over 50%) for the proposals to:

- Remove the requirement for interested parties to show vicinity when making relevant representations (56%)
- Make the default position for the magistrate's court to remit the appeal back to the licensing authority to hear (53%)
- Make 168 hours (7 days) the minimum period of voluntary closure that can be flexibly applied by police for persistent underage selling (53%)

There were **mixed responses** to the proposals to:

- Designate health bodies as a responsible authority
- Introduce the prevention of health harm as a licensing objective
- Remove the evidential requirement for Cumulative Impact Policies
- Limit the Late Night Levy to the recovery of proposed costs
- Offer reductions for the late night levy to premises which are involved in schemes to reduce policing costs

- Introduce an upper limit for the period of voluntary closure that can be flexibly applied by police for persistent underage selling
- Ways to define the “cost” of alcohol

## **CONCLUSIONS**

There was, in general, a divide between respondent types with support for the proposals from the public, licensing, police and health respondents and opposition to the proposals from the trade. However, responses to specific proposals and questions demonstrate a more complex situation; with a wide range of views also expressed that do not neatly fall into the proposals being given clear support or dissent.

It is worth noting that looking at the responses by respondent type shows a majority of responses coming from those involved in licensing, enforcement, police and health (36%) and members of the public or their representatives (34%). The “Trade” response amounted to only 15% of the total received and therefore, their dissent to certain proposals would not necessarily affect the overall result in our analysis for determining whether the majority of respondents showed support or dissent. For this reason we have included quotes from responses and summaries of the Regional and National Events to provide contextual information to better understand the nature of the support and dissent for each proposal.

## 2. INTRODUCTION

### BACKGROUND

The Home Office consultation document, “Rebalancing the Licensing Act: A consultation on empowering individuals, families and local communities to shape and determine local licensing”<sup>3</sup>, explains the background to this consultation.

The document goes on to set out a series of proposals to deliver the Government’s commitments as set out in the Coalition Agreement, by rebalancing the power to make licensing decisions in favour of local communities through the following measures:

- Give licensing authorities the power to refuse licence applications or call for a licence review without requiring relevant representations from a responsible authority
- 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 objectives
- Reduce the evidential burden of proof required by licensing authorities in making decisions on licence applications and licence reviews
- Increase the weight licensing authorities will have to give to relevant representations and objection notices from the police
- Simplify Cumulative Impact Policies to allow licensing authorities to have more control over outlet density
- Increase the opportunities for local residents or their representative groups to be involved in licensing decisions, without regard to their immediate proximity to premises
- 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
- Amend the process of appeal to avoid the costly practice of rehearing licensing decisions
- Enable licensing authorities to have flexibility in restricting or extending opening hours to reflect community concerns or preferences
- 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
- Substantial overhaul of the system of Temporary Event Notices to give the police more time to object, enable all responsible authorities to object, increase the notification period and reduce the number that can be applied for by personal licence holders
- Introduce tougher sentences for persistent underage sales.
- Trigger automatic licence reviews following persistent underage sales
- Ban the sale of alcohol below cost price
- Enable local authorities to increase licensing fees so that they are based on full cost recovery
- Enable licensing authorities to revoke licences for non-payment of fees
- Consult on the impact of the Mandatory Licensing Conditions Order and whether the conditions should be removed

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<sup>3</sup> The full document is available to read in full at <http://www.homeoffice.gov.uk/publications/consultations/cons-2010-licensing-act/alcohol-consultation?view=Binary>

The consultation document sought views from members of the public, those that run or work in pubs, clubs, supermarkets and shops, criminal justice agencies, licensing authorities, health bodies and trade associations representing those who produce and sell alcohol.

As the key commitments outlined had already been published in the Coalition Agreement, this consultation mainly sought views on the implications of implementing the proposals, rather than inviting views on the commitments themselves.

The consultation covered England and Wales, where the proposals would apply due to the fact that most of the proposed measures would require changes to the 2003 Licensing Act, which only applies to England and Wales.

## 3. OVERVIEW OF CONSULTATION ACTIVITY

### CONSULTATION OF ACTIVITY

The Home Office ran a public consultation for 6 weeks between 28th July and 8th September 2010 to invite the general public and key interested parties involved in the alcohol industry, policing, enforcement, licensing and health to input into considerations for a series of policy proposals to deliver Coalition Agreement commitments as outlined in a consultation document.

During the consultation process, people were invited to submit formal responses using a proforma either online or on paper. This was supplemented by an opportunity for key interested parties to attend a series of national and regional events. The Home Office received a total of 1,089 individual responses to the consultation. A breakdown of formal responses received by method of response is contained in Table 1:

**Table 1:** Number of Responses by Method of Response

Number of Responses by Method of Response	Number of Responses	Percentage of Total Responses
Online proforma	479	44%
Email	498	46%
Paper responses	112	10%
<b>TOTAL</b>	<b>1,089</b>	<b>100%</b>

For the purposes of this analysis, respondents were categorised into four main respondent types, namely:

- “Public” - All those responding as individual members of the public and residents associations
- “Licensing, Enforcement and Health” - All those involved in licensing activities and enforcement, police and health bodies
- “Trade” - All those working in the alcohol retail and manufacturing industries, including the on-trade, the off-trade, hospitality sector, trade organisations and manufacturers
- “Other” - All other respondents who did not fit into these categories. This included some charities, organisations, entertainment businesses and village halls

A breakdown of the total number of formal responses by Respondent Type is shown in Table 2:

**Table 2:** Number of Responses by Respondent Type

Number of Responses by Respondent Type	Number of Responses	Percentage of Total Responses
Public	370	34%
Trade	164	15%
Licensing, Enforcement & Health	387	36%
Other	117	11%
Not stated / unsure	51	5%
<b>TOTAL</b>	<b>1,089</b>	<b>100%</b>

A series of seven Regional Events were held across England and Wales, which gave key interested parties the opportunity to hear more about the proposals and to discuss their responses in

workshops. In total 517 people attended one of these events. A breakdown of attendees by Respondent Type is given in Table 3:

**Table 3:** Number of Attendees at Regional Events by Respondent Type

Number of Attendees at Regional Events by Respondent Type	Number of Attendees	Percentage of Total Attendees
Unstated	19	4%
Licensing, Enforcement & Health	321	62%
Public and Residents Associations	16	3%
Trade	96	19%
Other	65	13%
<b>TOTAL ATTENDEES</b>	<b>517</b>	<b>100</b>

The summary of discussions at the Regional Events is offered as further contextual information in this analysis. Seven National Events were held during the consultation to give key interested parties an opportunity to discuss their thoughts on the proposals. A total of 113 people attended these events. A summary of discussions at the National Events is offered as further contextual information in this analysis.

## CAMPAIGN RESPONSES

### BALANCE NORTH EAST

Balance, the North East of England’s Alcohol Office funded by North East Primary Care Trusts, the Department of Health, the Home Office and local Police forces, produced a postcard and encouraged a campaign response asking members of the public to support the following two statements that both had tick boxes next to the statement to encourage respondents to indicate their support for the following statements:

- Statement 1: *“I support this Government’s intention to tackle alcohol pricing. It should be done in a way that targets young people and the heaviest drinkers without punishing moderate drinkers and community pubs. That means linking the price of alcohol to its strength with a minimum unit price”.*
- Statement 2: *“I Support the government’s intention to give local communities the power to reduce the availability of alcohol. It’s too easily available in too many places during too many hours of the day”.*

In total, 2,938 postcards were received by the Home Office from members of the public. Table 4 shows the breakdown of these responses:

**Table 4: Balance North East Campaign – Breakdown of Responses**

CAMPAIGN RESPONSES	Number of Responses	Percentage of Total Responses
<b>TOTAL POSTCARD RESPONSES</b>	<b>2,938</b>	
Only box 1 ticked, expressing support for this statement: “I support this Government’s intention to tackle alcohol pricing. It should be done in a way that targets young people and the heaviest drinkers without punishing moderate drinkers and community pubs. That means linking the price of alcohol to its strength with a minimum unit price.”	170	6%
Only box 2 ticked, expressing support for this statement: “I Support the government’s intention to give local communities the power to reduce the availability of alcohol. It’s too easily available in too many places during too many hours of the day”	163	6%
Both Boxes ticked	2,277	78%
No boxes ticked	328	11%

The key points from this campaign response have been considered alongside all other comments from individual and organisational respondents. The emphasis in the analysis for this report was on the content of the campaign response, not on the number of submissions received.

## NETMUMS

Netmums conducted a survey on their website between the 9th and 16th August 2010, to find out the views of parents on some of the key areas where changes are proposed. 323 individuals completed the survey and 287 lived in England and Wales, and the results from the members in England and Wales are reported here. Netmums members are parents, mostly mothers, of younger children, and are diverse in their backgrounds, both social and geographical. The survey asked seven questions, which showed that those taking part were concerned about crime and antisocial behaviour that comes from people (and often young people) drinking too much both nationally and locally.

The survey results showed there was overall support for measures to involve community groups more in the licensing process and for action to tackle underage sales. Opinions were mixed in terms of support for the ban on below cost selling. The results are contained in Annex A.

## INSTITUTE OF LICENSING

The Institute of Licensing is the professional body for licensing practitioners in England, Wales and Northern Ireland. Their membership encompasses local authorities, police and other regulatory practitioners, legal practices, private consultants / training providers, Industry operators and Industry representatives.

The Institute's membership represents over 1500 individuals and 200 organisations across the country. Following the announcement of the consultation on 'Rebalancing the Licensing Act', the Institute consulted its members by way of an online survey to gather views on the proposals.

As a result of the membership survey 234 responses were received representing: Local Authorities (78% of respondents), Police (13%), Legal Practitioners (7%) and other groups (2%).

Despite the overall majority of responses from a local authority background there were relatively few areas with a strong consensus. The areas with the strongest degree of consensus were:

- 68% agreed that Cumulative Impact Policies should be simplified to allow licensing authorities to have more control over outlet density
- 68% disagreed that local residents or their representative groups should have increased opportunities to be involved in licensing decisions, without regard to their immediate proximity to the premises
- 78% agreed that licensing authorities should be enabled to have flexibility in restricting or extending opening hours to reflect community concerns or preferences
- 79% agreed that ADZs should be repealed
- 71% agreed that there should be a substantial overhaul of the TENs to give police more time to object, enable all responsible authorities to object, increase the notification period and reduce the number that can be applied for by personal licence holders
- 79% agreed that there should be tougher sentences introduced for persistent underage sales
- 81% agreed that local authorities should be able to increase licensing fees so that they are on a full cost recovery basis
- 86% agreed that licensing authorities should be enabled to revoke licences due to non-payment of fees

The responses clearly indicate concerns about some of the proposals and some very pertinent points are raised throughout which should be considered. There is a positive support for Best Bar None, and similar initiatives within the industry to be recognised when considering reductions for any late night levy.

The overall responses and comments from the survey results submitted were considered alongside other consultation responses in this analysis.

## 4. CONSULTATION RESPONSE ANALYSIS

### GENERAL OVERARCHING COMMENTS

Many responses indicated their discontent with the period allowed for the consultation (6 weeks) and requested further time to consider specific questions or to work with Government in the further development of the detail of proposals.

### NATIONAL EVENTS

There was widespread criticism from representatives of the alcohol trade on the short period allowed for this consultation, expressing the view that the consultation did not appear to be a genuine consultation, and that the truncated timeframe made it difficult to fully consider the proposals and provide a detailed response. This view was echoed by some local authorities that commented on the difficulties in making an informed and agreed decision within the timeframe.

Trade representatives emphasised the impact of the set of proposals on business in terms of resulting in additional cost. Several members of the trade also criticised the lack of proposals on personal responsibility and felt that the trade is blamed for irresponsible personal behaviour.

There was significant concern from the trade that the proposals would remove some of the necessary checks and balances that had previously been built into the 2003 Licensing Act.

Concerns were raised, particularly from trade representatives about the lack of evidence presented in the consultation document and the rationale behind some of the proposals. Several cautioned that rushing through proposals could lead to ‘messy legislation’.

### CONSULTATION RESPONSES

*“There is a significant groundswell of support from the Service for the general direction of travel and there is much to commend the document” (Police Respondent)*

*“We agree the majority of licensed premises are well run. We disagree that the Government’s approach will not be at the expense of those responsible businesses.... It is our view these powers along with others which can be used to control licensed premises are not used to their full potential. If the current powers available to protect communities from irresponsible businesses were used to their full extent, none of the proposals contained in the Consultation Document would be needed.” (Trade Respondent)*

*“We are aware that in the European Community three regulatory measures have been shown to be the cheapest way of reducing the harm done by alcohol – increasing taxation, restricting sales and controlling advertising.*

*The second aim is to introduce more fairness into the legislative process, fairness for the applicant and for all other parties likely to be involved in the process including the licensing authority, responsible authorities, authorised authorities and interested parties. Several of the proposals go some way towards an ‘Equality of Arms’ in the licensing process, which was sadly lacking in the 2003 Licensing Act and was subsequently aggravated by the Guidance that accompanied it.” (Public Respondent)*

# RESPONSES TO SPECIFIC CONSULTATION QUESTIONS

## GIVING MORE LOCAL POWERS TO REFUSE AND REVOKE LICENCES (QUESTIONS 1 – 11)

### OVERARCHING COMMENTS

#### NATIONAL EVENTS

Local government representatives generally supported the proposals and saw them as simplifying the Licensing Act and giving licensing authorities greater discretion.

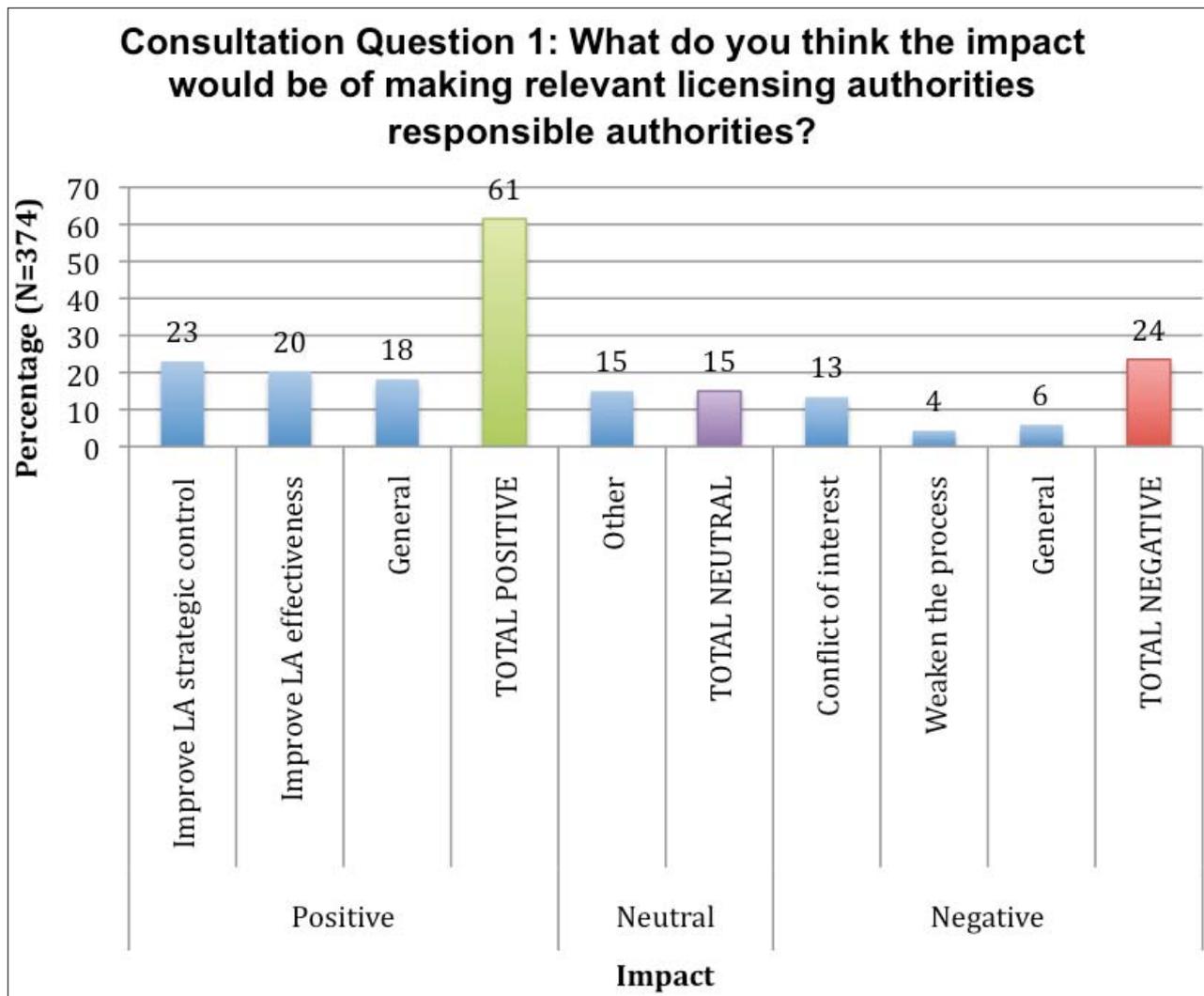
#### REGIONAL EVENTS

The main themes emerging from comments inputted across the Regional Events in relation to this question were:

- Views appeared to be polarised with some respondents supporting the proposal and others having concerns
- Those in favour felt that it would bring licensing in line with the Gambling Act and the rest of the UK in relation to licensing which currently operate in this way and was *“fundamental to what licensing authorities should be doing”*. There was a feeling that this would make licensing authorities more effective in their role and allow for more timely intervention, as they did not have to wait for objections from others. *“This is a positive move to influence how your town looks and what the authority want to shape it towards”*
- Those not in favour felt that this would remove the licensing authorities’ impartial viewpoint, put licensing authorities at greater risk of being subject to appeals
- A number felt that clear guidance and clarification of roles would be needed to ensure that the approach minimised the potential risks
- Some licensing authorities felt that this was not needed as they felt the current system worked well and should not be changed

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

### CONSULTATION RESPONSES



**Figure 1**

Responses to this question were broadly supportive of the proposal. Many regarded the proposal as a move to enhance the effectiveness or strategic control of Licensing Authorities. Of those who indicated that the proposal would have a negative effect, it was widely felt that a conflict of interest would result.

*“It can be evidenced through the Gambling Act, of which local councils are responsible authorities and which is fundamentality dealing with the same issue – the licensing of an activity, that a local authority can assume responsible status.” (Police Respondent)*

*“The proposal impacts on the rules of natural justice, effectively making the Licensing Authority the enforcing power, judge and jury. Article 6 of the Human Rights Act 1998 guarantees applicants the right to a fair and public hearing by an independent and impartial tribunal established by law. This right is threatened by the proposal.” (Trade Respondent)*

*“The major impact would be on the ability of Licensing Authorities, in spite of there being no*

*valid representations, to ensure that the proposals are compatible with the relevant local Licensing Policy and so be able to impose appropriate conditions on premises licences omitted from applications that are necessary in order to benefit the four licensing objectives.”*

**(Public Respondent)**

*“The 2009 North East alcohol mapping exercise, highlighted a local drive for councils to assume responsible authority status and hence this proposal accords with the wishes of practitioners who are working with the current legislation on a day to day basis. The impact of such a move would be to facilitate a more effective, efficient and joined up service and would undoubtedly lead to a streamlining of workloads associated with licensing for other responsible authorities. This would more firmly link licensing issues into local Community Safety Partnership and Strategic Alcohol governance structures.”* **(Licensing Authority Respondent)**

*“Such a proposal could however place a greater burden on already overstretched licensing authorities from the weight of expectation from residents and other interested parties that the licensing authority would be able to enforce all complaints brought to their attention by way of a review for example. It would therefore be essential that all other enforcing responsible authorities continue to work in partnership.”* **(Licensing Authority Respondent)**

## **NATIONAL EVENTS**

Trade representatives were, in general, strongly opposed to this proposal as they felt it would remove some of the checks and balances from the Licensing Act. However a small number of trade representatives noted that this policy had worked with the Gambling Act and could be effective when applied to alcohol licensing.

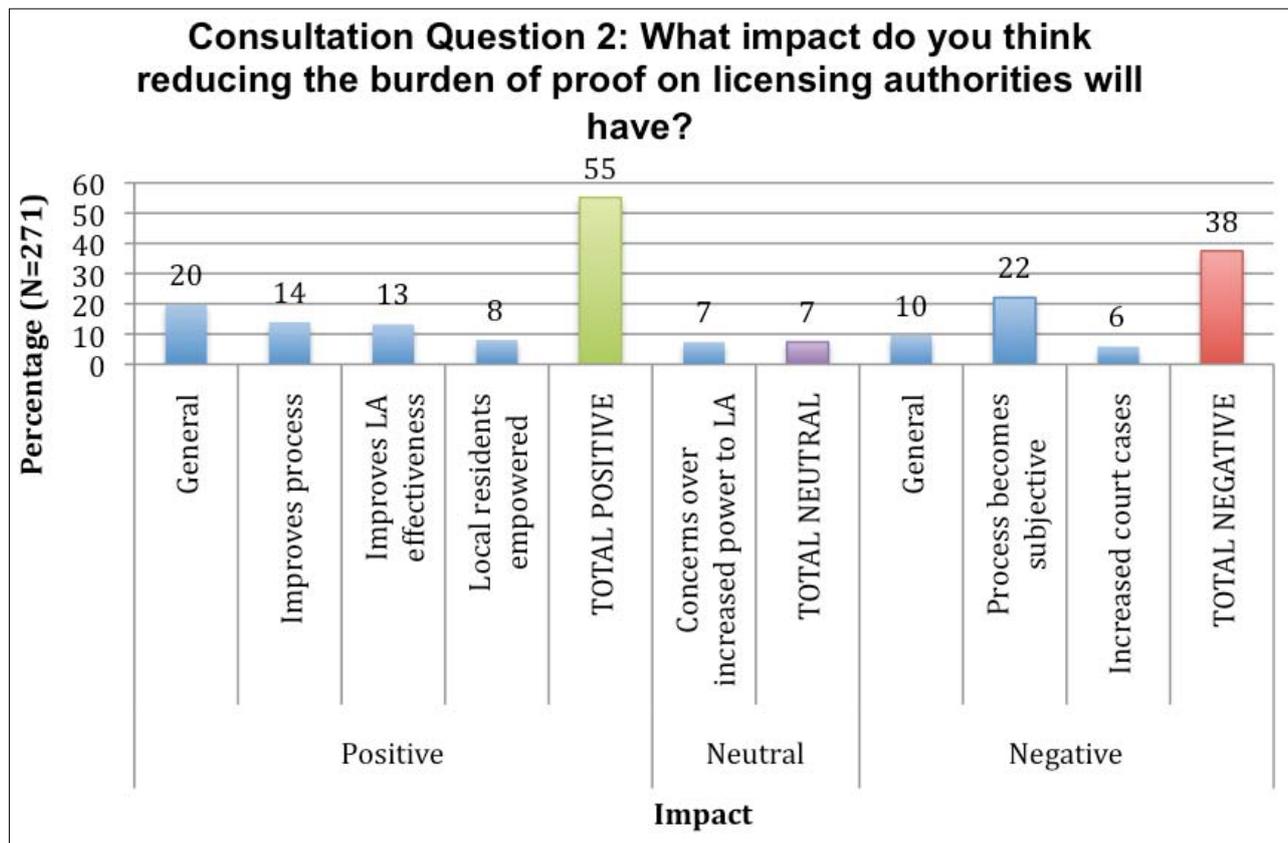
Some legal representatives cautioned that consideration should be given to how this would work with the appeals process. A trade representative suggested that the period for appeals should be lengthened to allow applicants more time to counter the additional representations, however some trade representatives felt that this would give too much power to licensing authorities who some perceived to be against the licensee.

A number of trade representatives also suggested that this would be particularly difficult for businesses operating in a number of local authority areas, who may have to deal with a number of different licensing approaches.

Trade and local authority representatives cautioned that any changes should be supported by clear guidance with clear differentiation in the roles that can be adopted by different members of the licensing authority and ensuring that application of these powers was workable in practice.

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

### CONSULTATION RESPONSES



**Figure 2**

Although a majority of respondents indicated that, overall, reducing the burden of proof on local authorities represents a positive step, the most common response to this question expressed concern that the proposal might undermine the fairness of the licensing decision-making process (Negative category: “Process becomes subjective”).

Amongst those to respond positively to the proposal, it was felt that reducing the burden of proof would allow licensing authorities to make decisions based firmly on the needs of their locality.

*“While we recognise there may be problems gathering evidence for new applications, Councils seeking to suspend or remove an existing alcohol licence have to be able to demonstrate clear evidence of irresponsible practice, it cannot be right to remove a person’s job or livelihood without a fair hearing.” (Trade Respondent)*

*“This Council believes that all actions taken or decisions made by the licensing authority should be reasonable and proportionate and should be evidenced and explained.” (Licensing Authority Respondent)*

*“Currently there is a significant evidential burden on local authorities as licensing authorities to defend their decisions and actions in granting a license. We believe that as a standard part of the application process, applicants should provide relevant information to justify how granting the license will impact the area they operate in. They will also need to illustrate how they will mitigate against any potential negative impact that granting the license may have. This*

*approach would transfer the evidential burden on to the applicant.*  
**(Licensing Authority Respondent)**

## NATIONAL EVENTS

Trade representatives were generally opposed to this proposal based on concerns around natural justice and questioned the evidence to support doing this.

Trade representatives suggested that the Government should encourage greater working with local bodies who would be able to provide the required evidence and that there should be a greater focus on best practice.

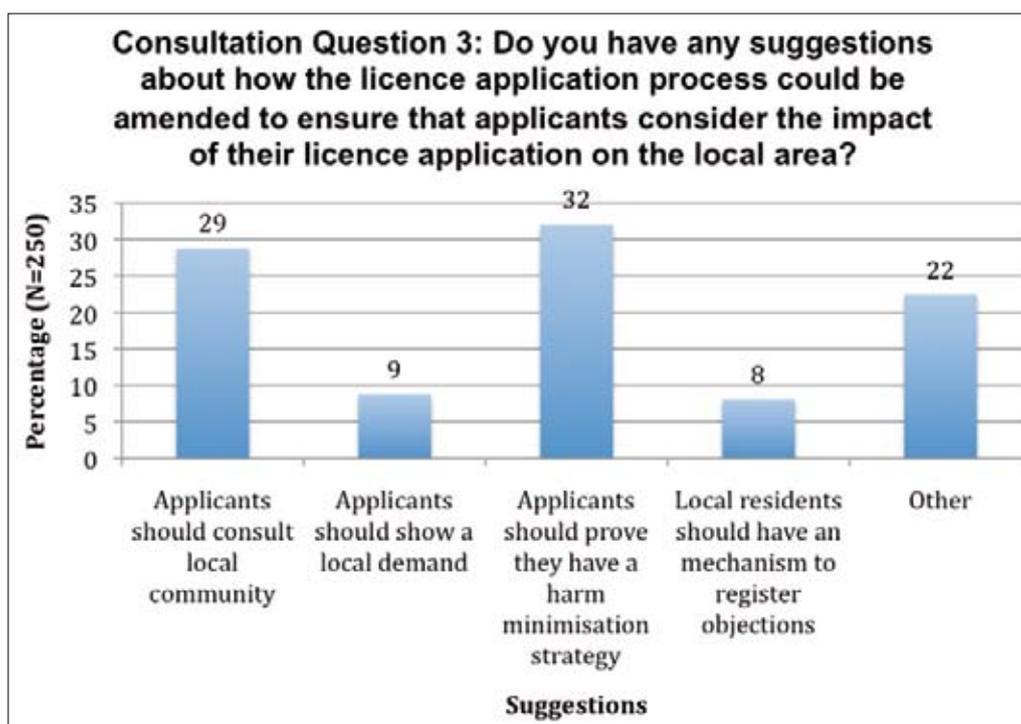
Some members of the trade emphasised that they were not opposed to the Government's localism agenda, but wanted to ensure that the processes were in place for businesses to challenge local decisions when these are not seen to be correct.

Trade and Police representatives felt that this set of proposals would result in greater inconsistency among different licensing authorities than is currently seen with the Licensing Act.

Police representatives were broadly in favour of this proposal and suggested that licensing authorities have often been reluctant to take tougher action due to fear of challenge. Some community representatives agreed with this view.

## 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?

## CONSULTATION RESPONSES



*Figure 3*

Respondents to this question expressed strong support for licence-holders to consult the local community and demonstrate a harm minimisation strategy. Others also suggested that a simpler mechanism to register licence application objections should be put in place or that applicants should show a local demand.

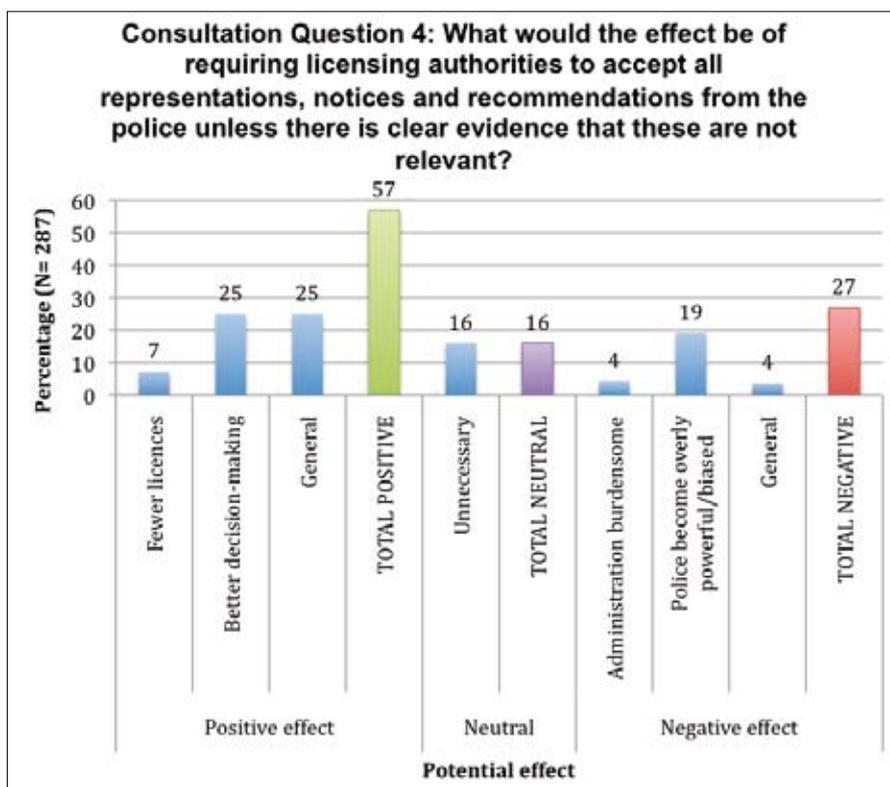
*“Business owners are unlikely to have the skills to judge the impact of their application on their community. If they do not have an in-house licensing assistance within the business they will be forced to spend on professional assistance. While this will lead to significant extra cost for all licensees, the extra cost burden will disproportionately impact on smaller retailers who are the least likely to have in-house facilities.”* **(Trade Respondent)**

“We would advocate that applicants are required to present a business case setting out why they feel there is a need for a new licence/licence variation and how it would benefit the area. The onus should be on the applicant and this would accord with a reversal of the ‘presumption to grant’ which is embraced within the current legislation. Also, to make the conditions around background checks and relevant offences more comprehensive and robust in order to prevent licence holders in breach of licence conditions in one area simply moving to another.”

**(Licensing Authority Respondent)**

**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?**

**CONSULTATION RESPONSES**



*Figure 4*

The proposal attracted broad support amongst respondents, with a number pointing to the police's local intelligence on crime and disorder hotspots. Amongst these respondents it was also noted, usually amongst respondents involved in licensing, that this occurs already.

Trade respondents in particular, however, expressed concerns over the neutrality of the police.

*"In recognition of the police's experience and as long as clear relevant information has been provided more weight should be given to representations/notices made by the police."*

**(Licensing Authority Respondent)**

*"It is difficult accurately to assess the effect of this proposal without more detail being provided on how such a change would work in practice. For example, how would a relevant representation be defined and what degree of discretion would the licensing authority have to determine whether the justification provided was adequate? Would they be obliged to accept the evidence and representation without question? What evidence base would be required to support a representation? This may, in fact, increase the burden on the police and licensing authority alike without delivering a meaningful change in existing practice, as local authorities are obliged to have regard to all relevant representations. It also effectively removes the role of licensing authority as independent arbiter."* **(Trade Respondent)**

*"In full support of this proposal as we are the frontline service dealing daily with the consequences associated with licensed premises. This allows the majority of our evidence to be first hand which should be allowed to carry significant weight. This proposal is also welcomed by a number of forces who feel that this would provide clear guidance to the licensing authorities that the government believe the police voice is vitally important in relation to licensing. There are occasions when forces feel that their representations do not receive the level of consideration that they perhaps should. A number of members raised concerns in relation to further appeals being made by the trade due to this proposal, however, we do not see this as an issue as all representations made by the police should be evidenced."*

**(Police Respondent)**

## NATIONAL EVENTS

Where this proposal was discussed, it lacked support across all respondent types.

Local Government representatives were concerned that it would result in other relevant representations not being given equal consideration, with the crime and disorder objective therefore being given more weight and legal representatives also raised concerns with the compatibility with Human Rights legislation.

Some trade representatives suggested that the proposal might take away the ability of industry to work with the local authority.

Police representatives also raised some concerns about the proposal, although they acknowledged the potential benefits of ensuring that police evidence was considered and given sufficient weight.

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

### CONSULTATION RESPONSES

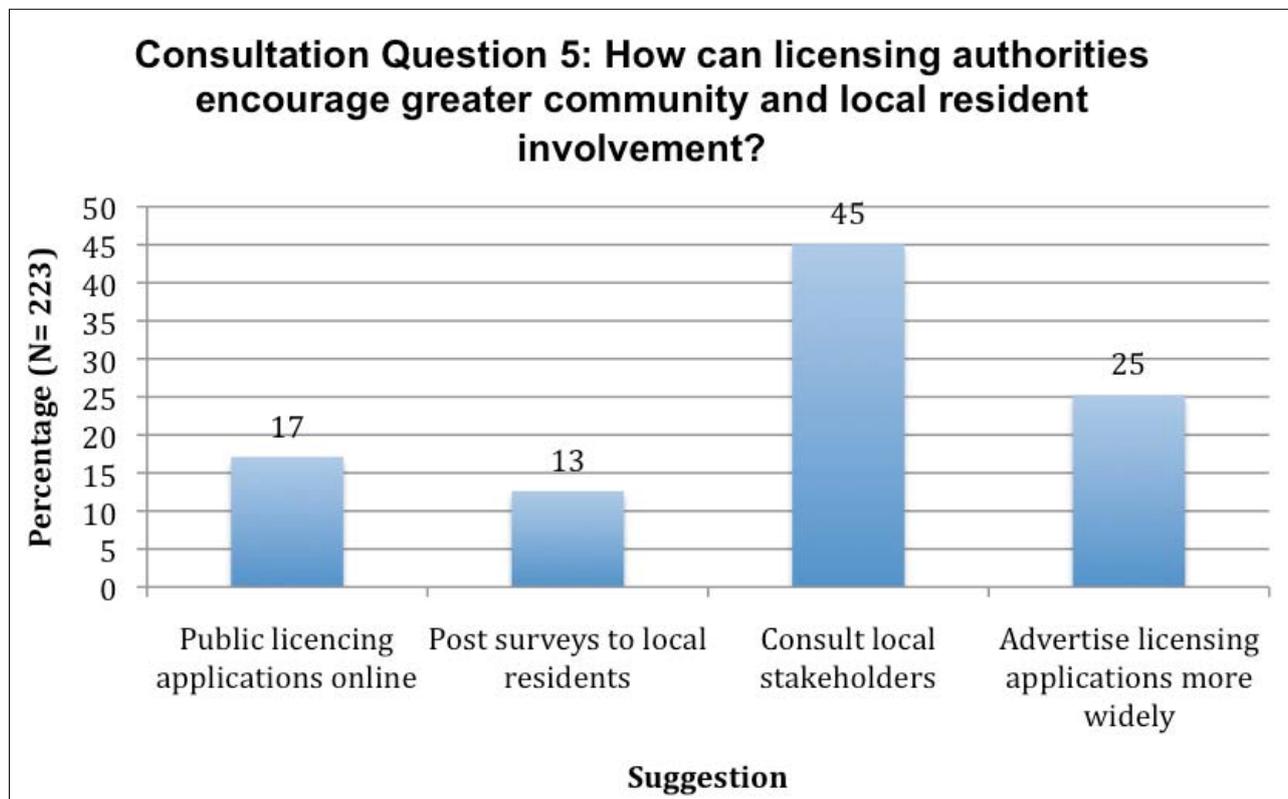


Figure 5

Generally, public respondents to this proposal welcomed greater involvement, and a clear majority stated that this should take the form of local consultation of interested parties.

Other noteworthy suggestions included: (i) increasing the font size used in licensing application notices (displayed in the local area) to help the visually impaired, (ii) invite local residents to attend licensing panel meetings, and (iii) publish licensing applications online (a number of licensing respondents noted this already occurs in some areas).

Whilst this question called for suggestions, a sizeable number of respondents, especially those directly involved in the trade, voiced opposition to increasing community/local resident participation.

*“The LA should supply relevant data to the local press – if there is one - so that a weekly notice is published usually in the form of an article, which is more obvious to the public, and is the method used by planners. Some planning authorities also circulate notices of planning applications to residents and businesses neighbouring the relevant premises although it is not mandatory, but it does represent good social practice. These three methods of changing the method of advertisement would encourage greater involvement of the public and residents. The mandatory involvement of resident groups in pre-application discussions would ensure public engagement, but obviously it would only apply if there were residents likely to be affected by the licensing application. The LA should be able to advise applicants which residents and which groups they should consult. A third way of involving community groups in the licensing process would be to expect LAs to produce an agreed vision of the night economy*

*in their area. This would enable resident groups to contribute to the local licensing and planning policies and would alert everyone to the kind of standards which were desired and expected in the area.” (Public Respondent)*

*“We welcome the encouragement of greater community and local resident involvement. This not only makes the final decision more robust by ensuring concerns are addressed in the licence as finally granted, but also reduces the likelihood of subsequent complaint post application. At present, in many cases there is a tendency towards general apathy during the application process and residents only engage when problems arise.” (Trade Respondent)*

*“When applicants are applying for a license in a particular area, residents should be made aware of how they can be more involved and the options available to them. Support should be given to residents informing them how they can go about making interested party representations and how to strengthen their representations.”*

**(Licensing Authority Respondent)**

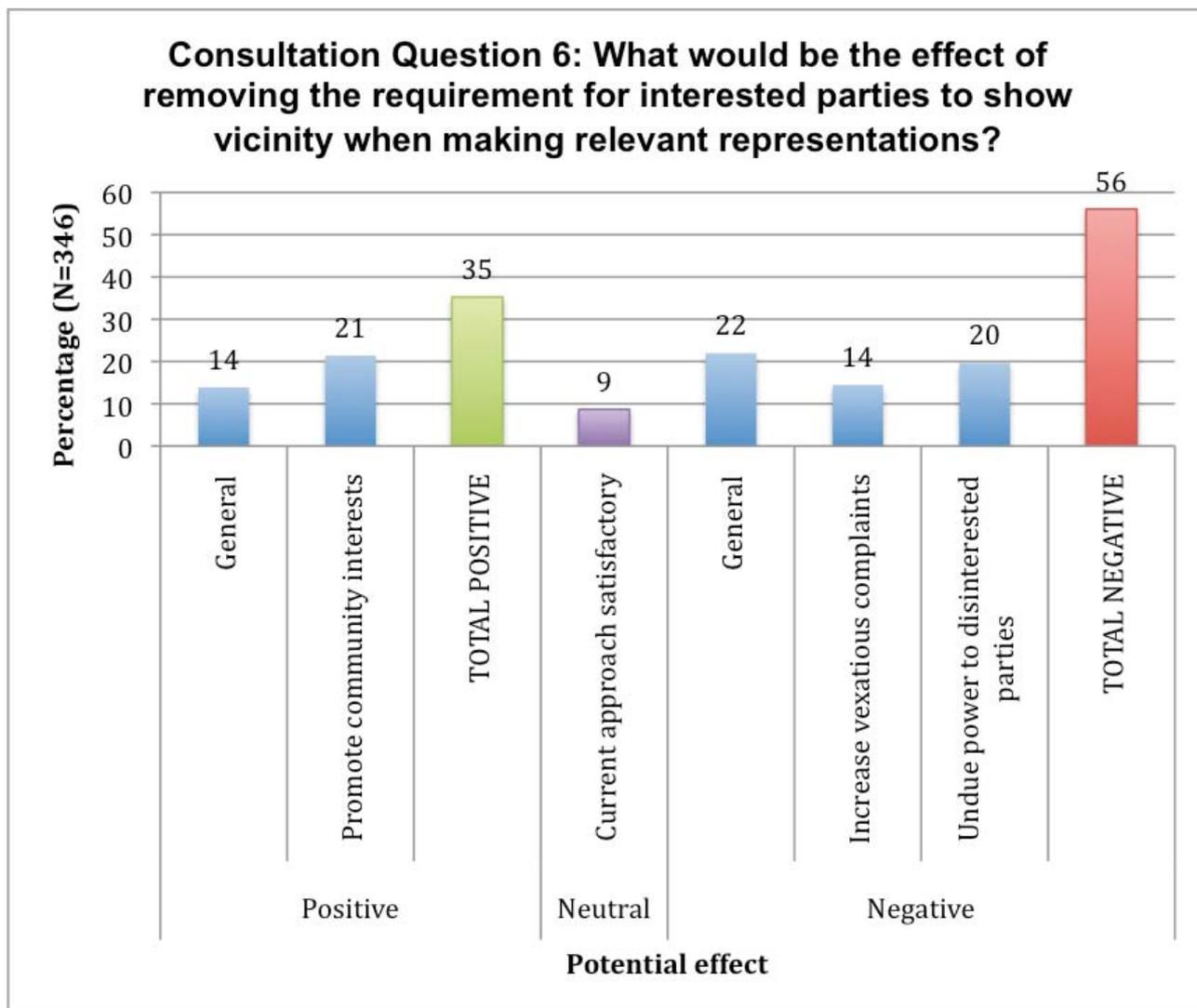
## REGIONAL EVENTS

The main themes emerging from comments inputted across the Regional Events in relation to this question were:

- A consistent suggestion was to establish local alcohol forums or community led groups that regularly had contact with licensing authorities and police. Some suggested that letter drops, email alerts and websites containing clear information would assist with this, with calls for data to be put in the public domain to inform opinions and a clear outlining of resident’s powers in relation to this. *“Current procedure only encourages negative comments and notices should make it clear that positive comments are also encouraged”.*
- A common response was to ensure that licensing authorities and police supply regular information to residents or organisations representing them so that they can make more informed decisions. It was mentioned that this information needed to be unbiased and balanced so that the public could see the benefits of licensed premises for their area as well as potential concerns. One response suggested that this could be achieved by licensing authorities publishing a clear vision for their night time economy in improving tourism, employment, regeneration etc.
- However there was a concern expressed about *“representations being made from people outside of the relevant area”* and that it would be difficult to have safeguards to ensure that campaigners did not attempt to prevent any new premises opening across a wide area. Also there were concerns raised about the potential for competing businesses to use this approach to cause problems for each other
- In addition, a number of responses felt that there was already *“ample opportunity for residents and local groups to get involved and that licensing authorities already make every effort to consult”*
- Some responses to this question were linked to the proposal to remove the definition of “vicinity” to premises for those making representations, raising the point that if “vicinity” is removed, how would Government define “community” in relation to individual premises
- Some felt that the Licensing Act should be amended to define specific groups to be consulted – these included parish councils and residents associations
- Across these responses, it suggests that clear guidance would be required to define exactly how community organisations should be involved and what the extend of their involvement would be

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

### CONSULTATION RESPONSES



**Figure 6**

A majority of respondents, from across all sectors, indicated that this proposal would lead to a rise in vexatious complaints and give disproportionate influence to non-local individuals. Generally, respondents expressed a concern that this would undermine the fairness of the licensing process.

*Nevertheless, those that regarded the move as positive welcomed the wider community involvement and, significantly, pointed out that a licensed premises may have an effect far beyond its immediate vicinity (customers leaving the premises via a particular route in the early hours, for example).*

*“We wholeheartedly agree with this proposal. The term ‘vicinity’ is open to interpretation and can often be an unwelcome distraction to debating and considering the really significant issues associated with licensing applications/ variations. Such a move would remove uncertainty for residents and would also enable them to have a voice in the development of their town.*

*This could include processes similar to planning ones where local residents would be given opportunity to comment.” (Licensing Authority Respondent)*

*“This will lead to more hearings, more bureaucracy and more cost for both licensees and Licensing Authorities. It might lead to those in the vicinity of premises with a genuine fear of an application by or grievance against those premises being drowned out by the myriad voices of others from outside the vicinity.” (Trade Respondent)*

*“The total removal of the requirement for interested parties to show ‘vicinity’ could be counter-productive, since it might then attract representations from interested parties with no clear involvement in the application. Unfortunately the legislation on vicinity allows LAs to define vicinity, with the result that it can be used to restrict the right for interested parties to submit representations even though they can provide evidence that the application would affect them... Licensing magistrates under the 1964 Licensing Act allowed representation by those who could claim that the application could affect them, and [we] consider this the most fair and the simplest method of determining validity for representations.” (Public Respondent)*

## NATIONAL EVENTS

There were mixed views with regards to this proposal. The main concern from trade representatives being that the proposal could result in an increased number of vexatious complaints from members of the public who are generally opposed to pubs. However there were mixed opinions on the likelihood of increased numbers of objections from those living outside the area.

Not all trade representatives or local authority representatives saw the need for this proposal and some felt that it might complicate the current situation. Trade representatives also had concerns that this would increase the requirement to publicise applications more widely, which would result in additional costs to businesses. However, there was some acknowledgement from across different respondent types that there may be residents outside the immediate vicinity who are affected as they live en route to a premises.

As a solution to this, there was some support from trade, police and health representatives for simplifying cumulative impact policies to enable greater restrictions on the numbers of licensed premises in an area. It was also suggested across the respondent types that the approach used in the Gambling Act where anyone can object as long as they can demonstrate that they are reasonably affected by the premises may be the way forward.

Representatives from across several respondent types suggested that local residents would benefit from further education on how to get involved in the licensing process and that providing further information on council websites may be helpful.

## REGIONAL EVENTS

The main themes emerging from comments inputted across the Regional Events in relation to this question were:

- The main advantages listed were:
  - *“It will stop different licensing authorities taking a different approach to who they include”*
  - It will allow a wider section of the public to be heard, ensuring a broader base of consultation
  - It will avoid complaints from disgruntled residents who have not been allowed to complain as they have been classed as not in the vicinity of a licensed premises
  - Some felt that this would help, as the current situation was not particularly clearing. *“There*

*never was a definition of vicinity as this required case law”*

- The main disadvantages listed were:
  - There were concerns that people would object even though they were not adversely impacted by a premises, and the area allowed would be too wide
  - A potential increase in the cost of the licensing process by making the process more lengthy and increasing the number of hearings
  - The process could detract from arguments about the benefit to the community of a licensed premises
  - *“This would make it very difficult for an applicant to prepare their licensing application as the licensing authority may not disclose the location of objectors”*
  - It would be unfair on businesses because it would attract too much potential criticism
  - Many felt that it would be harder to prove whether the nature of a representation was ‘frivolous’ or ‘vexatious’ than whether the complainant lived in the vicinity of a premises

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

### CONSULTATION RESPONSES

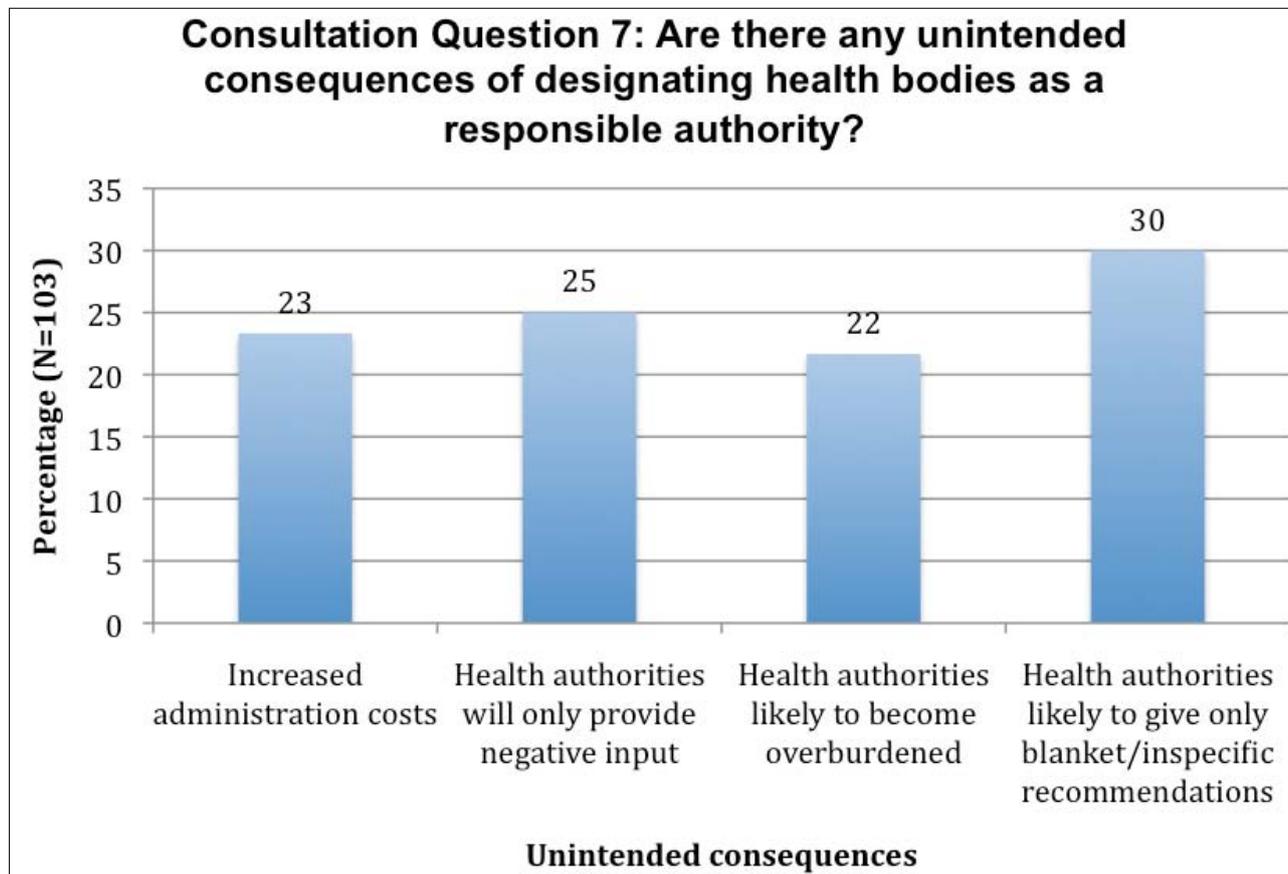


Figure 7

The responses to this question were varied. The notion of ‘unintended consequences’ was not widely understood and, as such, the range of unintended consequences identified was limited. It was frequently noted that health authorities are unlikely to be in a position to provide specific case-to-case representations in the licensing process and are thus likely to make blanket recommendations. Moreover, by virtue of their interests in health, it was noted that health authorities would almost invariably only provide negative input.

*“It is vital however that for such a proposal to work that A&E data sharing and analysis is freely available (which is often not the case at this present time) to all responsible authorities and in particular to the licensing authority” (Licensing Authority Respondent)*

*“The licensing process has to be seen in the context of dealing with an industry that wants to encourage the sales of alcohol compared to a public health argument for the reduction of overall alcohol consumption. It is only right that concerns around public health are given due consideration. It is therefore crucial that health bodies become responsible authorities under the Licensing Act in order that they can bring their expertise, guidance and opinions to deliberations around licensing applications. Such is the huge impact of alcohol misuse upon the health service that we believe the input of health authorities is at least of equal importance to contributions of existing responsible authorities” (Licensing Authority Respondent)*

*“While we support a role for the health authority as an interested party, or as a point of*

*expertise for consultation as necessary by the Licensing Officer, we do not believe that the health authority should become a responsible authority.” (Trade Respondent)*

*“It is crucial that health bodies become responsible authorities under the Licensing Act so that they can bring their knowledge and expertise to discussions about the granting, variation and review of licenses. The impact of alcohol misuse on the NHS now equates to £2.7bn each year and therefore we believe that the input of health bodies into licensing decisions should be on a par with the contributions from other responsible authorities. This proposal would also follow on from the role PCTS have as responsible authorities in Community Safety Partnerships.”*

**(Health Respondent)**

## NATIONAL EVENTS

Police, licensing and health representatives were broadly in favour of increasing the role of health bodies in the licensing process and suggested that there was already evidence available from sources, such as A&E departments, which would be beneficial to include in the process. Some legal and third-sector representatives questioned how this would work in practice if “health” was not also added as a licensing objective.

## REGIONAL EVENTS

The main themes emerging from comments inputted across the Regional Events in relation to this question were:

- Many wanted the term “health bodies” defined in terms of actual roles or agencies that would be involved
- The main benefits of designating health bodies as a responsible authority were:
  - Some felt that the input of health bodies at a strategic level was invaluable
  - That it could be used to pay for treatment for dependent drinkers
  - Many felt that it would improve data sharing across the partnership in local areas
  - Broader conditions could be included on a licence that could include health concerns – but many raised that this role would be very difficult if “health” was not also a objective in the Licensing Act and that “health” would have to be added to the operating schedules of new licences and could not be added to existing licences’ operating schedules
- The main disadvantages of designating health bodies as a responsible authority were:
  - This “*could slow down the licensing process*” as it would invite a new area of concerns to be raised that would take more time to deal with
  - There were concerns raised about whether health bodies had the right level of expertise around licensing or the capacity to become fully involved
  - Some felt that health bodies would not be able to react in an unbiased way to licensed premises, and they felt it was important to make clear that alcohol is consumed responsibly by the majority of drinkers and sold responsibly by the majority of retailers. “*They would have a negative objection to every application to sell alcohol*”
  - Concerns were raised that they could only give a general response as it would be “*almost impossible*” to robustly link data on health harms to specific licensed premises. The concern about the quality of data was echoed in many responses

# CONSULTATION QUESTION 8: WHAT ARE THE IMPLICATIONS IN INCLUDING THE PREVENTION OF HEALTH HARM AS A LICENSING OBJECTIVE?

## CONSULTATION RESPONSES

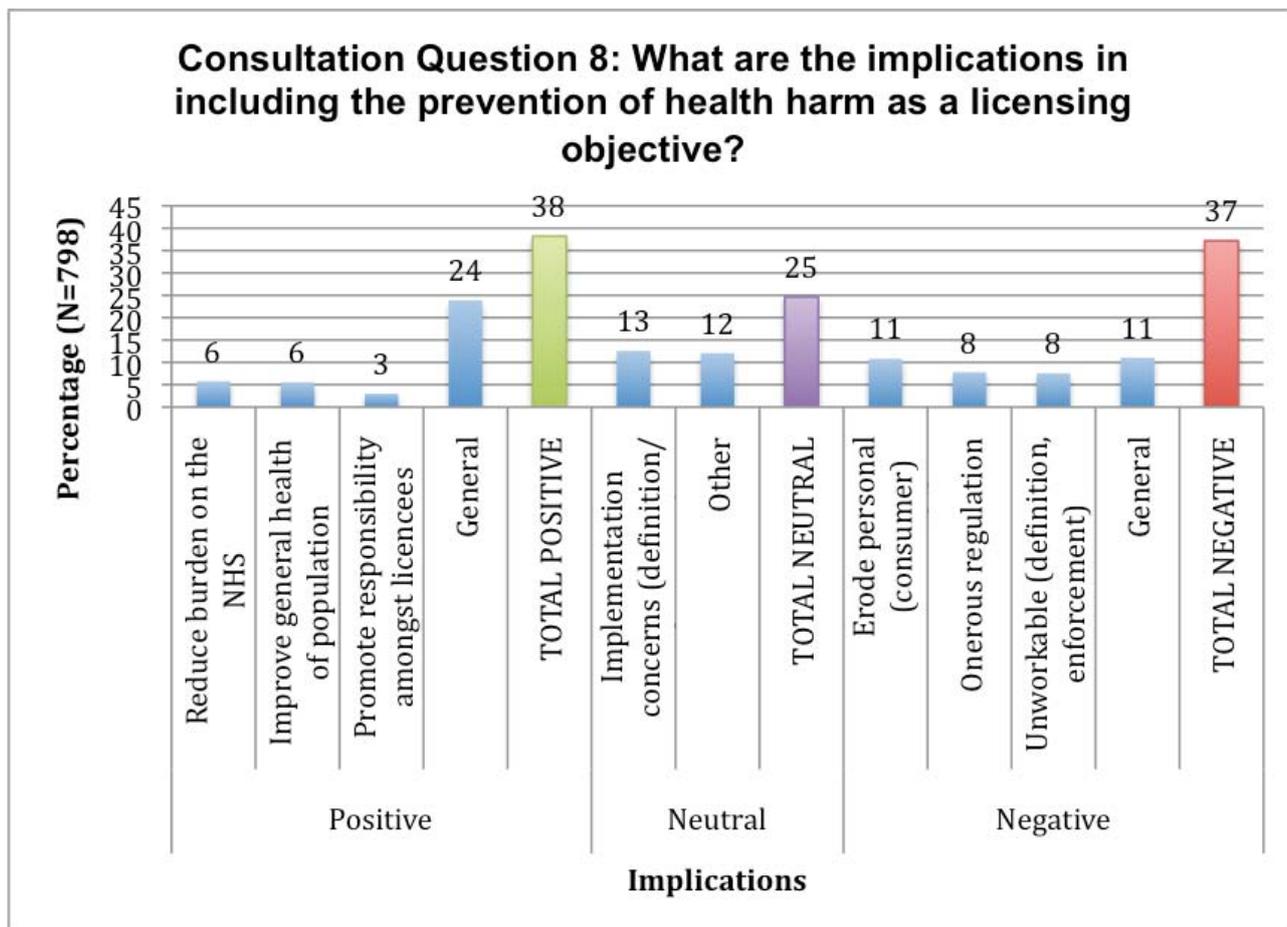


Figure 8

Responses to this question were divided. Those approving of the proposal tended to cite improved population health, reduced burden on the NHS or increased responsibility amongst licencees. However, those opposing the measure indicated that the inclusion of health authorities would either be unworkable or onerous.

*“[We] would fully support making the prevention of health harm a material consideration for licensing authorities by making it a fifth objective of the Licensing Act. Assuming they would base their decisions on robust local health data a public health objective essentially would allow local authorities to judge the impact of the on and off-trades on local residents’ health, and therefore provide them with a legal opportunity to maintain license levels (outlets and hours) steady, as well as provide an additional lever where crime and disorder concerns are difficult to link to particular venues. We are not supportive of the proposal as highlighted in the consultation of giving licensing authorities the ability to use health as a discretionary power where there appears to be a local problem area. The health harm from alcohol misuse is*

*widespread and applies to populations across the whole country and therefore a much more comprehensive approach is needed.” (Health Respondent)*

*“[Our] company has 44 premises in Scotland where of course the promotion of public health is already a licensing objective under the provisions of Licensing Act (Scotland) 2005. We can make no comment, positive or negative on the impact of this fifth licensing objective because it does not appear to inform the licensing process to any significant extent. Premises licence holders are unsure how they can promote public health and the bodies responsible for the licensing objective suffer from the same uncertainty and appear to provide little effective guidance.” (Trade Respondent)*

*“This Council would welcome the ability to adopt this proposed fifth licensing objective as a discretionary objective where it is considered or shown that there is a local problem.” (Licensing Authority Respondent)*

*“Warning of health harm as with smoking is fully supported but including health harm as a licensing objective could be extremely controversial and difficult to operate” (Public Respondent)*

## NATIONAL EVENTS

There were mixed views around including the prevention of health harm as a licensing objective. Trade and licensing representatives had a number of concerns around the proposals about the additional costs that would be incurred by local authorities if “health” was added as an additional licensing objective.

Several members of the trade and legal representatives cited difficulties experienced in Scotland in trying to introduce an objective of ‘protecting and improving public health’ and suggested that the Licensing Boards had found the objective difficult to interpret and apply.

Some members of the trade suggested that it might be preferable to add “health” as a material consideration rather than a fifth licensing objective. Local government representatives also thought there may be a better way to consider “health” within the process to incorporate some local discretion. Some trade representatives suggested this could be done through schemes such as the Campaign for Smarter Drinking.

There was some support for the proposal from police, health and community representatives particularly in relation to giving greater consideration to A&E statistics, and alcohol-related violent crime when making licensing decisions. Some representatives noted that A&E data sharing already happens in some areas.

Some trade representatives questioned whether a link could really be drawn between alcohol consumption in certain premises or areas and visits to A&E departments or alcohol related hospital admissions.

Although some police representatives were not entirely convinced about adding “health” as a licensing objective, the majority were in favour on the grounds that it would make the process more clear-cut and ensure that evidence presented on health grounds was given due consideration.

## REGIONAL EVENTS

The main themes emerging from comments inputted across the Regional Events in relation to this question were:

- Respondents felt the main local health issues this should cover were impact on A&E, ambulance and hospital admissions. It was also felt that the impact of alcohol on domestic violence, numbers of alcohol related assaults, levels of consumption in the area, levels of underage drinking, and highlighting the wider health impact of cheap alcohol should be considered
- The most commonly expressed benefits were:
  - It would give licensing authorities another set of issues to consider when granting or reviewing licences, widening the issue away from just a criminal justice focus
  - It would *“put the emphasis on the applicant and would demonstrate that the applicant has a knowledge of how their business impacts on public health”*
  - It would allow local Public Health departments to intervene in licensing matters and raise the level of awareness and priority given to alcohol related health harms
  - Some felt it would reduce the number of outlets with long opening hours, and that heavy drinkers and young people would get health benefits from such a move
  - However, many felt that this would not work if unless local health bodies were also made responsible authorities
- The most commonly expressed risks were:
  - Some felt that enforcement of licensing using health grounds would be *“almost impossible”* and that *“non acute health harm relating to specific premises would be very difficult if not impossible to determine”*
  - A number felt that this change was not required as “public safety” was already a Licensing Act objective
  - Some expressed the view that the size of the groups needed for decision-making would then become unworkable

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

### CONSULTATION RESPONSES

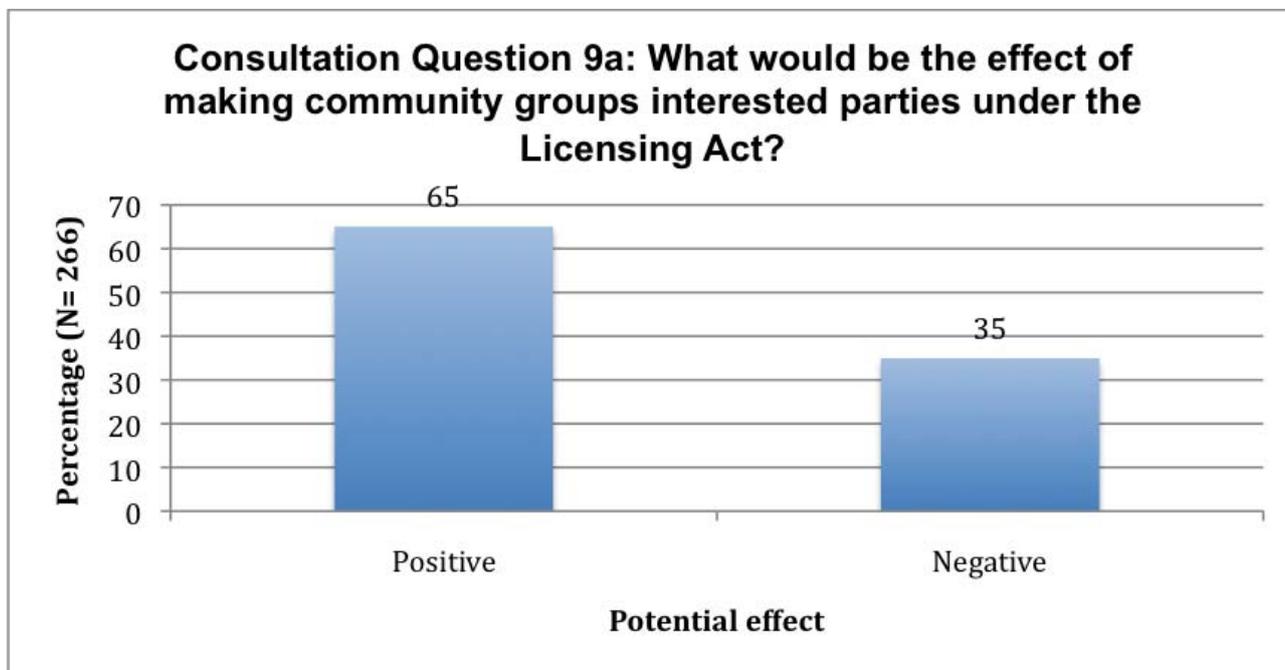


Figure 9

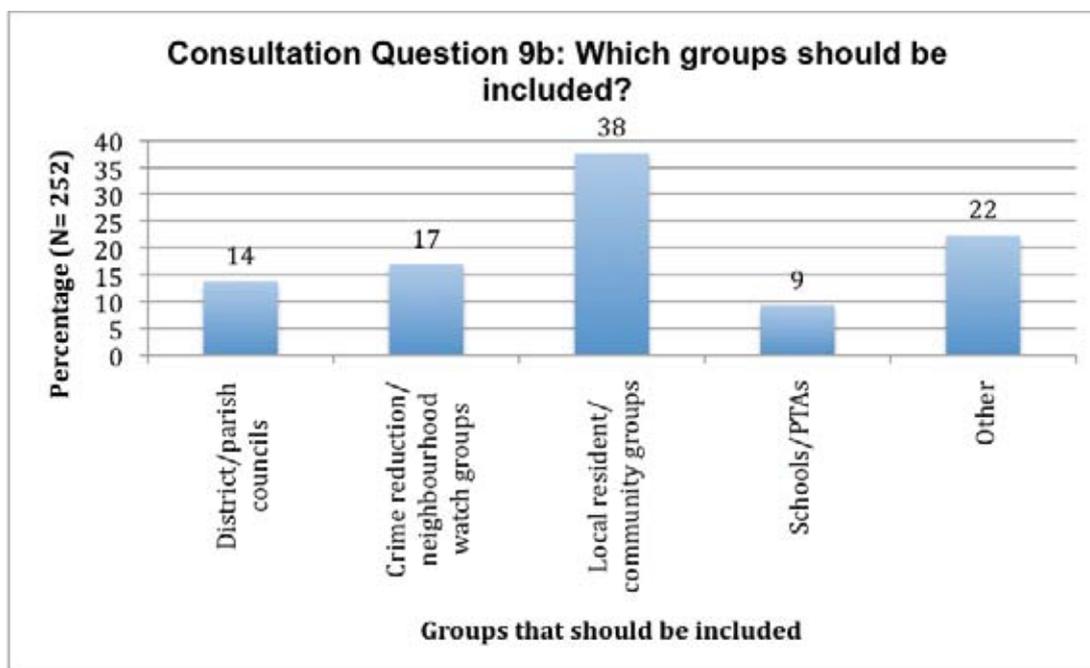


Figure 10

Whilst most respondents (65%) felt that the impact of this proposal would be positive (Figure 9), trade respondents voiced concern – as with Question 3 - that widening community participation the licensing process was unnecessary and potentially burdensome. Figure 10 shows that a range of groups was identified as potential interested parties. Those most

frequently cited were: (i) Local community groups; (ii) Crime reduction/neighbourhood watch groups; (iii) District/Parish councils; and (iv) Schools and/or parent-teacher association. Other also suggested included: Pubwatch, street pastors, taxi wardens, and local business representatives.

*“[We] fully support the underlying principle of this proposal which is to get more people involved through the inclusion of some community groups... However, a possible unwanted outcome from this proposal may be increased duplication and bureaucracy because listing community groups as interested parties may increase the number of representations that licensing authorities may have to consider. However, if the license fee is increased to reflect actual cost then this would not put additional pressure on the resources of the licensing authority. The groups that should be included should only be those that can prove direct links to people living/working in the areas likely to be affected.”* **(Licensing Authority Respondent)**

*“The licensing act already makes provision for ‘a person involved in a business in the vicinity of the premises in question’ to make representation which can already pragmatically be interpreted by applying common sense to include school governors or housing associations for example and also makes provision for ‘a body representing persons living in that vicinity, for example, a residents association, or a parish or town council... The Council therefore believes that any extension beyond this is unnecessary”* **(Licensing Authority Respondent)**

*“Community groups can and should be encouraged to comment as interested parties, where they have a legitimate interest.”* **(Trade Respondent)**

*“If the Government does wish to increase the say of local people in the licensing process it should explore means by which those who may want to support an application can be greater involved so a balanced picture is achieved. Our experience is that it is those who do not want a premise in their vicinity are more motivated to involve themselves than those who do and this should be addressed. For many a pub is welcome addition to their local amenity.”*  
**(Trade Respondent)**

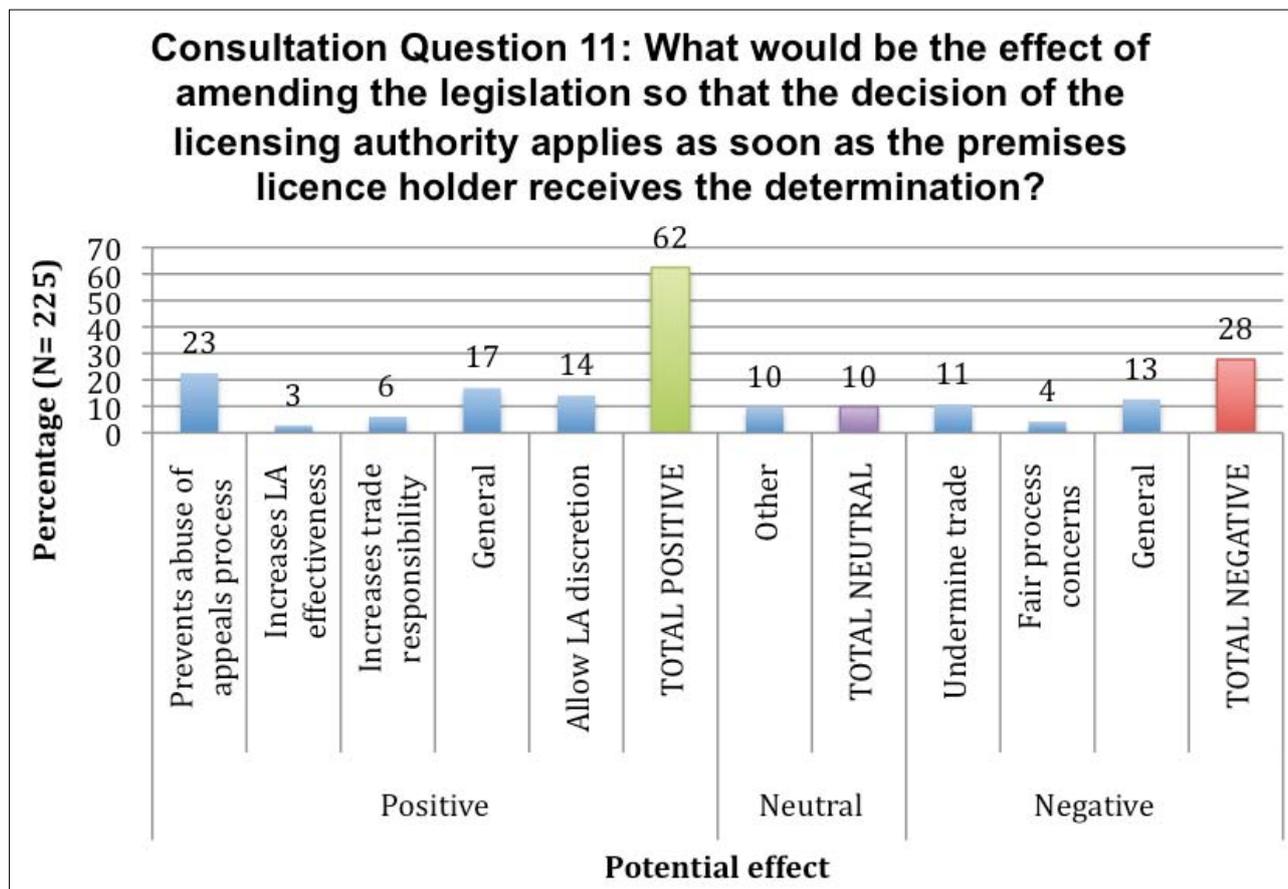
## NATIONAL EVENTS

Some representatives from academic institutions suggested that current powers available to local residents are under-used because of a lack of co-ordination amongst residents and that the proposals outlined would enable local authorities to lead a community response.

There was discussion across respondent types about publicity requirements for licensing applications and whether encouraging greater publicity online may lead to broader involvement of community groups and young people. Some community representatives suggested that there was a reluctance to use electronic communication methods. A community representative suggested that interested parties should be able to register to receive updates and notifications of licence applications.

## 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?

### CONSULTATION RESPONSES



**Figure 11**

The chief concern amongst most (53%) respondents to this proposal was the negative effect on the fairness on the licensing process. It was widely held that magistrates acted independently and objectively and played an important role in licensing. Amongst those who regarded the proposal positively, many identified reduced costs and increased local control as benefits.

*“Whilst a licensing appeal is a rehearing of the application, the Magistrates’ discretion is already restricted by the Secretary of State’s Guidance and the Licensing Authority’s Statement of Licensing Policy. Further, the High Court (as set out in R (On the application of Hope & Glory Public House Limited v City of Westminster Magistrates’ Court [2009] EWHC 1996 (Admin)) has stated that the Court on a licensing appeal should be slow to depart from a decision by a local authority and consider only doing so if it believes the decision is wrong, that is, either wrong at the time or wrong in the light of fresh evidence heard at the appeal hearing. In this way, licensing appeals are already balanced in favour of Licensing Authorities. Bearing in mind the Government’s other proposals, such as the ability of Licensing Authorities to make their own representations or to bring their own reviews, the special status of Police recommendations and the plan to ensure Licensing Authority decisions apply as soon as the determination is made, we believe it will be more important than ever, bearing in mind the*

*human rights legislation, to ensure there is a right of appeal to the Magistrates who retain full jurisdiction over the Licensing Authority. Furthermore, making remittance of the case back to the Licensing Authority the default position, will potentially double the costs of all parties taking part, including the Licensing Authority itself. We envisage this position will entail a full appeal hearing before the Magistrates followed by yet another hearing back before the Licensing Authority.”* **(Trade Respondent)**

*“This Council’s opinion is that an appeal to the Magistrates Court is a re-hearing of the application and in particular the stated case of Stepney Borough Council v Joffe makes it quite clear that an appellat Court should not interfere with a decision of a lower panel (such as a local authority licensing sub committee for example) simply because it is not satisfied that the licensing sub committee is right, but that it should do so only if it is satisfied that the decision made by the licensing sub committee is wrong. Magistrates cannot reach a decision that a local authority’s decision was wrong without holding a full hearing however. Therefore as a full hearing is required to be held anyway it seems inconsistent and unnecessary in terms of the valuable and limited use of Magistrates Court time and resources available for the Court to remit the matter back to the local authority for a rehearing, when the Court itself could have dealt with the application or the question of conditions to be imposed on a licence for example. It is also this Councils opinion that such a proposal of making the default position for Magistrates Courts to remit an appeal back to the licensing authority would actually have the net effect of increasing the workload and costs to licensing authorities, but without any resultant reduction in the workload of the Magistrates Courts.”*

**(Licensing Authority Respondent)**

## **NATIONAL EVENTS**

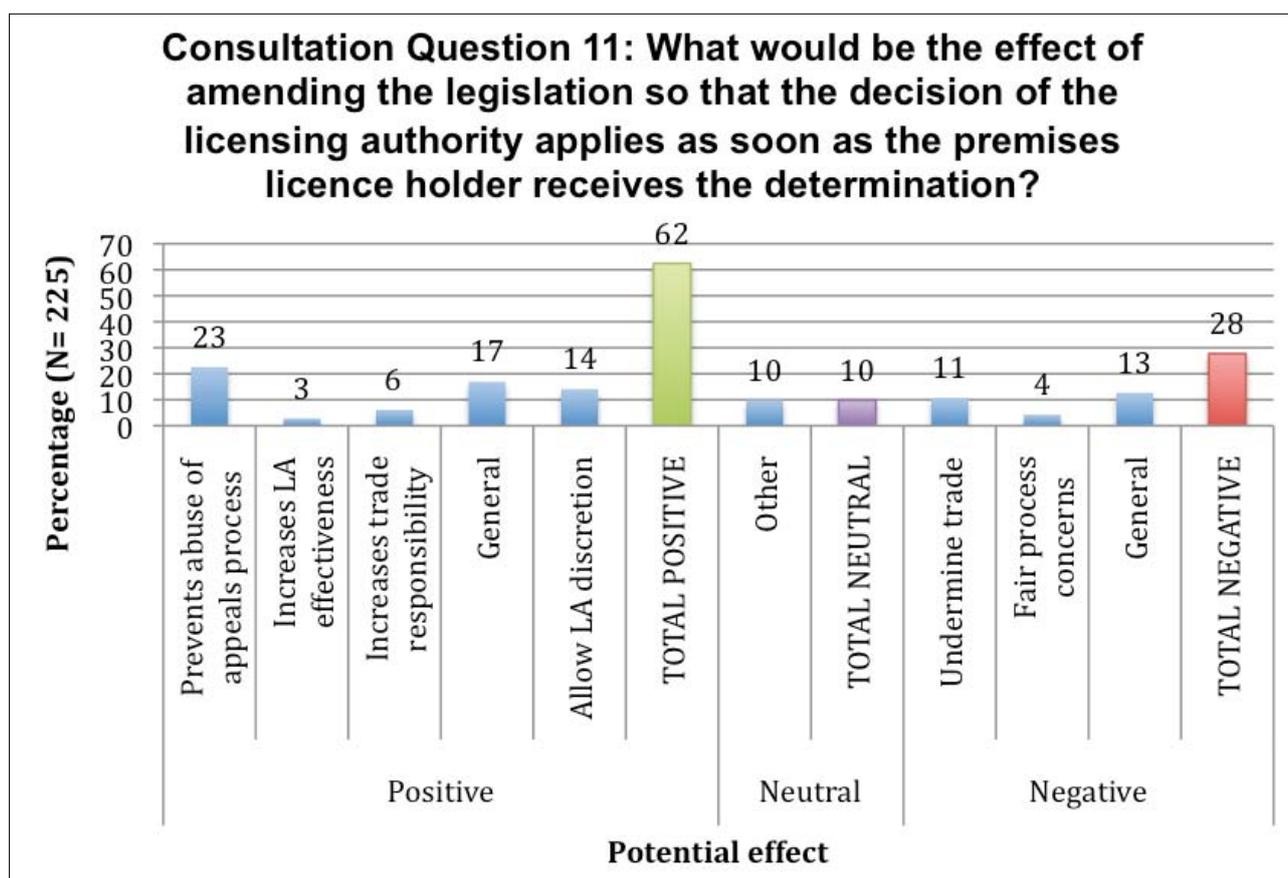
There was significant concern from the trade that changes to the appeals process would interfere with natural justice. The trade felt that existing powers were sufficient to close down problem premises. Some trade and legal representatives also had concerns regarding licensing authorities’ political motivations.

Some police representatives also raised concerns with this proposal as licensing committees are made up of elected officials and could perhaps therefore be influenced by local politics and were seen as perhaps being more likely than the courts to be intimidated by trade or barristers.

Police representatives raised concerns around local councillors (as part of licensing committees) having a role in the appeals process, as they were not considered to have a sufficient understanding of specialist issues. Police representatives suggested appointing district judges to deal with appeals and including locally elected members and local officials to ensure that local knowledge was well represented.

**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?**

## CONSULTATION RESPONSES



**Figure 12**

This proposal attracted wide support. It was frequently noted that licencees might delay the implementation of a licensing authority decision via the appeals process. This was seen as an abuse of process. An immediate implementation of the licensing authority decision, it was felt, would strengthen the authority’s effectiveness and increase levels of responsibility amongst licence holders.

*“This would address a source of concern amongst key agencies and the community. It would also discourage the practice of unscrupulous operators submitting appeals merely to continue trading with no intention of progressing the appeal at a later date. We agree sanctions should come into force immediately, and remain in force until the result of any appeal is determined”*  
**(Licensing Authority Respondent)**

*“It must also be considered that implementing a wrong decision affects more than just the business owner. It would impact on other businesses that trade with the retailer, those employed by the company and also the wider community. Often a convenience store may be the only food and service provider in the area; if this is shut down the impact on the community would be severe. Ultimately this measure is unnecessary. There are already powers in the*

*Licensing Act which allow the Police and Local Authority to take immediate action against businesses deemed a serious threat to crime or disorder via expedited reviews. In 2008/9 75 expedited reviews were instigated and the Licensing Authority decided to take interim steps in 69 cases which included reducing opening hours or even suspending the licence altogether. Expedited reviews are clearly an effective tool against most problematic premises.”*

**(Trade Respondent)**

## NATIONAL EVENTS

Police representatives were broadly in favour of introducing tougher appeals processes and making it easier to crack down on problem premises

## REGIONAL EVENTS

The main themes emerging from comments inputted across the Regional Events in relation to this question were:

- Some responses suggested looking at extending the remit of Expedited Reviews to include other issues, such as protecting children from harm
- *“The effect will be to make the whole licensing review process much more effective”*
- A number of responses were concerned that the impact would be the closure of businesses affected by this. This was seen as a greater risk to licensed premises where “rogue” authorities shutting premises down without sufficient evidence – as the burden of proof would have been effectively removed - and the rights of the licensee *would be diminished, as they would not have the proper right to redress. “Ill informed decisions impact greatly on well run premises if genuine misunderstanding occurs.”* It was suggested that quick action for closures would require equally quick access to appeals if it were to be a level playing field for licensing authorities and licensed premises
- A few responses felt that this would displace the problem rather than solve it
- A number of responses felt that existing partnership arrangements could be damaged and it could lead to licensing authorities acting without letting the police know and it could damage positive relationships with the trade
- Some felt that seeing swift action was being taken with problem premises would improve public confidence in the licensing and enforcement process and that it would have a positive impact on reducing crime
- There was a concern that licensing authorities would not be able to cope with the additional work that this would require and that it could lead to licensing authorities, or even individual officers, being at greater risk of prosecution if they have acted in error due to the immediacy of the action

## DEALING WITH THE PROBLEMS OF LATE NIGHT DRINKING (QUESTIONS 12 – 18)

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?

### CONSULTATION RESPONSES

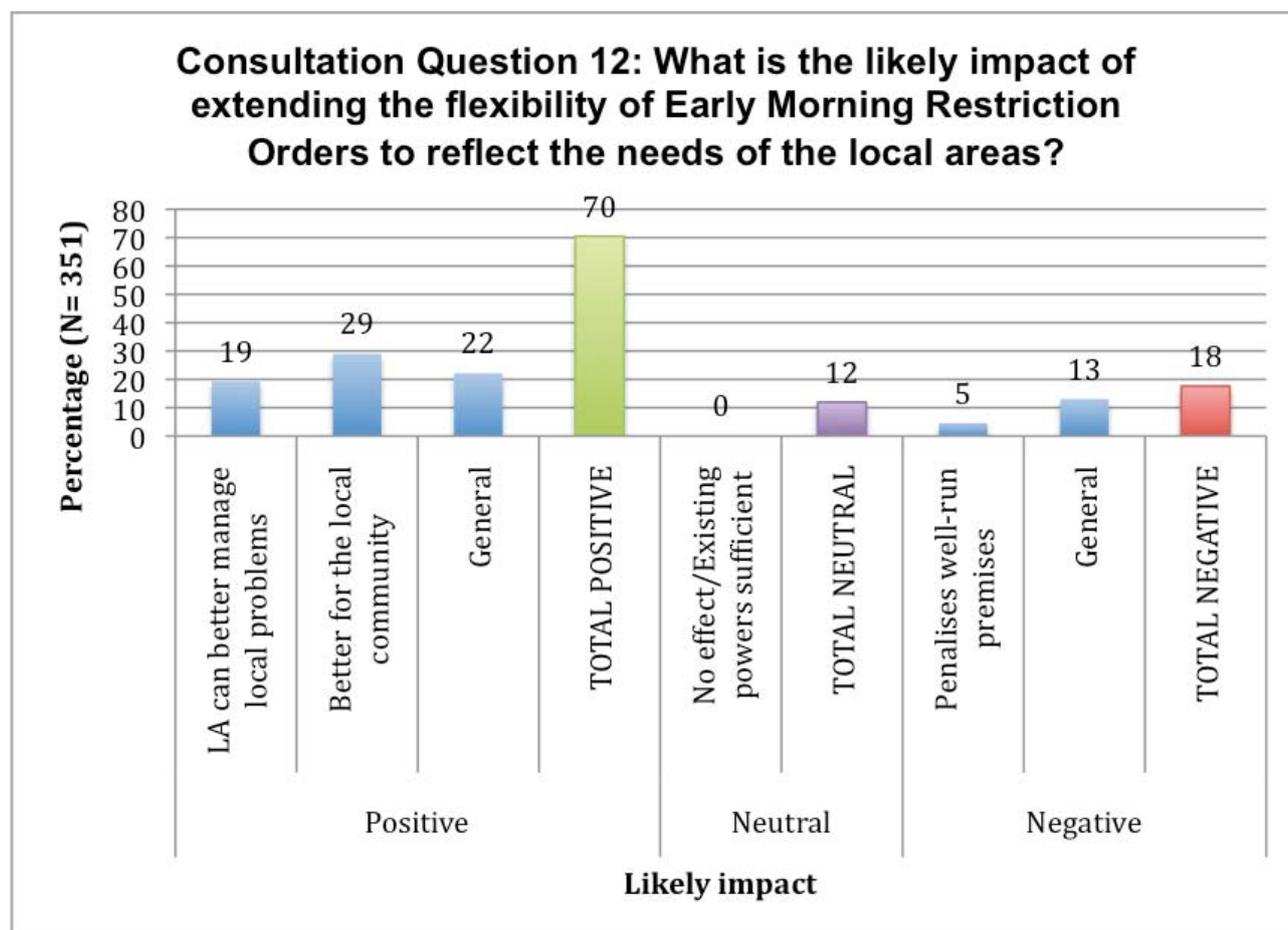


Figure 13

This proposal was given strong support. Although a minority of respondents (from the trade) was wary of the knock-on effect to well-run businesses, it was widely held that extending the flexibility of EMROs would be a significant benefit to local residents.

*“[We] support this proposal as the extension to licensing hours has impacted greatly on our local communities and the Police Service... The demands of policing the night time economy continue to be high. However, with the introduction of EMRO, peaks would be more predictable allowing police commanders to deploy according to demand... We would welcome the ‘Extending the flexibility’ to include processes and procedures which are less cumbersome and bureaucratic which will hopefully be addressed through the EMRO’s requiring to be ‘beneficial’ rather than ‘necessary”* (Police Respondent)

*“[We] would welcome the flexibility of being able to restrict the sale of alcohol beyond the current hours proposed by the use of Early Morning Restriction Orders (EMRO). It would not wish to see the use of an EMRO extended to premises such as residential hotels, guest houses, or supermarkets that have a legitimate reason to offer the 24 hour sale of alcohol to their guests or customers. There is little to no evidence that premises like these are responsible for late night/early morning alcohol related crime and disorder or public nuisance.”*

**(Licensing Authority Respondent)**

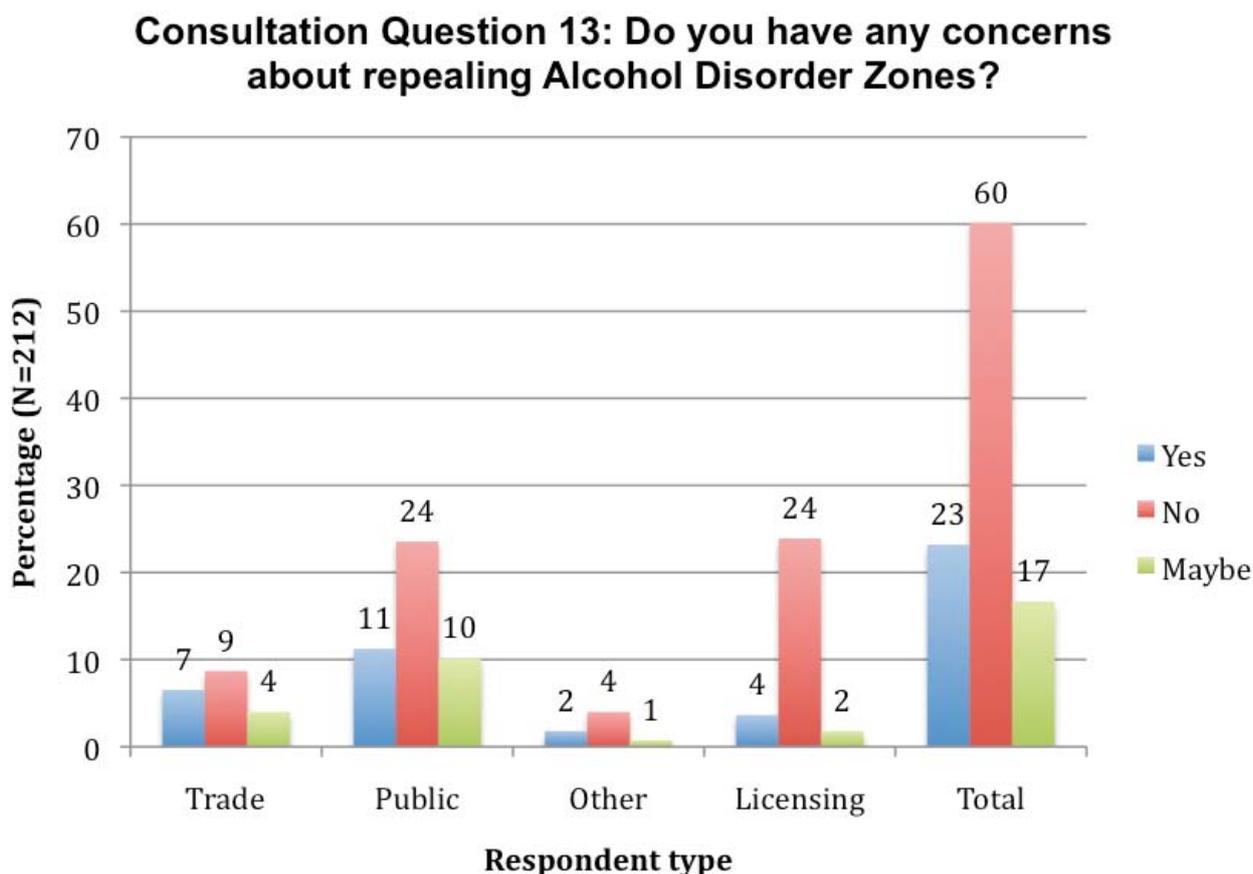
*“There is no evidential link as to how the off-trade, particular convenience stores, contribute to this problem by opening late at night. As EMROs are clearly not designed to tackle off-licences we would urge Government to amend the legislation so they do not apply to the off-trade... It is reasonable to suggest that Local Authorities have some flexibility on the time period an EMRO can cover. Yet to prevent possible abuses and to allow a degree of business certainty, this flexibility should only be allowed in a nationally specified timeframe. We would recommend the timeframe being between midnight and 6am, as the majority of convenience stores are not open in that time. It is important that the EMRO do not extend later than 6am, as that would have unforeseen consequences particularly on newsagents who open early in the morning.”*

**(Off-Trade Respondent)**

*“We consider this to be one of the most potentially damaging proposals put forward. It is a fundamental reversal of the principles of the Licensing Act 2003. We note that the driver behind the proposal is to ensure that local authorities have the power to address the problems caused by extensive late night drinking and the twenty-four hour licensing culture. We do not accept that the twenty four licensing culture is a reality.”* **(On-Trade Respondent)**

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

### CONSULTATION RESPONSES



**Figure 14**

The proposed repeal of Alcohol Disorder Zones was widely welcomed across all respondents. Many noted that they were rarely, if ever, implemented. Amongst the small minority with concerns, the imposition of additional fees associated with late-night policing was regarded poorly.

*“All forces who responded to the document indicated their support for the repeal of the legislation associated with Alcohol Disorder Zones. Due to the bureaucracy and the level of evidence required, licensing authorities have utilised other powers / legislation as an alternative” (Police Respondent)*

*“Since no local authority has introduced an Alcohol Disorder Zone, it is quite clear that they are ‘not fit for purpose’. The usual reasons given appear to be that they are both difficult to set up and even more difficult to monitor. So [we] have no concerns if this order were repealed.”*

*(Public Respondent)*

*“As no Alcohol Disorder Zones have been set up, we do not oppose the legislation being repealed. However we are concerned that lessons may not have been learnt from the failure in the policy and that similar failings may affect the Late Night Levy.” (Trade Respondent)*

*“This Council has no concern about repealing Alcohol Disorder Zones... The negative publicity and fall out arising from such a decision always seemed likely to make the use of ADZ’s*

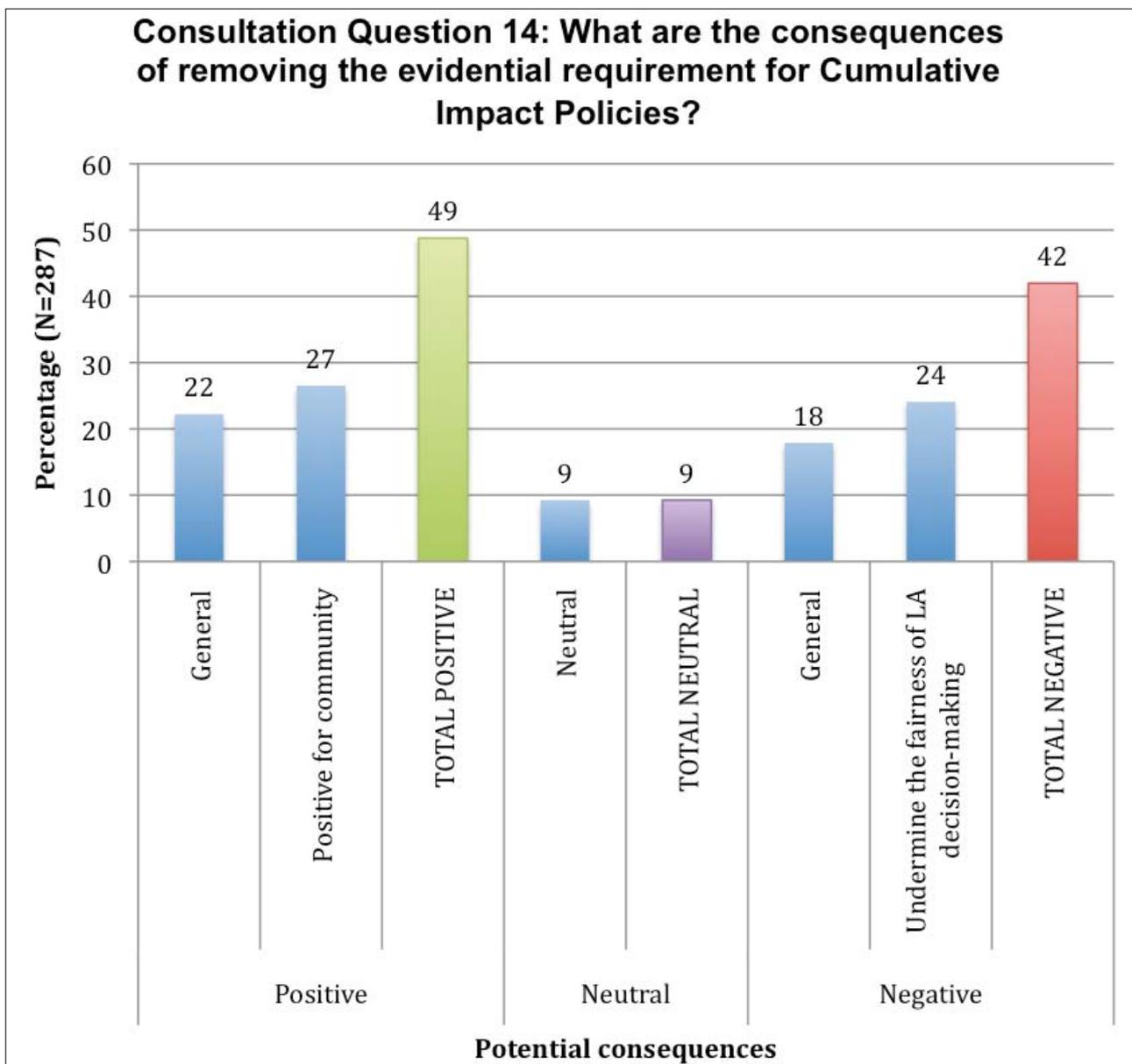
*unworkable. Therefore there is little point in leaving legislation on the statute books if it is not being used and is never likely to be used.*“ **(Licensing Authority Respondent)**

### NATIONAL EVENTS

Across all respondent types, people appeared to be in favour of repealing Alcohol Disorder Zones (ADZs) and no strong opposition was expressed towards this proposal.

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

### CONSULTATION RESPONSES



*Figure 15*

A number of respondents stated that they were not able to understand this question. However, the respondents who understood the proposal were polarised in their views. Responses, where specific concerns were cited, tended to either: (i) Support the proposal because it allowed the licensing authority to maintain better control of an area (49%); or (ii) Oppose the proposal because it would undermine the fairness of the CIPs (42%).

*“Cumulative Impact Policies are meant to address issues of concentration of premises and the challenges that can arise from this, and it follows, therefore, that they must be evidence based. Otherwise, applications from businesses which could have a beneficial impact on the area will be unnecessarily restricted.”* **(Trade Respondent)**

*“Rather than seeking to amend the cumulative impact process, we would recommend a return to applications being mandatorily considered in terms of need and sufficiency, as was the situation under the Licensing legislation preceding 2005. This is a much more robust approach and would ensure that such considerations are given in all cases, not just areas where there is a cumulative impact policy.”* **(Licensing Authority Respondent)**

## NATIONAL EVENTS

There was some support from trade, police, licensing and health representatives for simplifying cumulative impact policies to enable greater restrictions on the numbers of licensed premises in an area. However, in most cases, representatives stressed that these policies should be evidence-based.

Some representatives from the health sector suggested that cumulative impact policies should be made compulsory.

Police representatives raised concerns that, in some areas, where there is a detrimental cumulative impact from licensed premises, licensing authorities can still be reluctant to take action due to concerns about a potential negative impact on the local night time economy.

## REGIONAL EVENTS

The main themes emerging from comments inputted across the Regional Events in relation to this question were:

- Many felt that any reduction in the evidential requirement for Cumulative Impact Policies would need to be supplemented by wide consultation with the range of interested parties
- \Some supported this proposal “because it currently costs too much” to provide the evidence required, but this was often caveated with the concern “but how can you impose something [on businesses] without evidence?”
- Some were against the proposals as they felt that already Cumulative Impact Policies can prevent regeneration and impact on businesses viability, with others suggesting that the evidential requirement was essential for it to be a robust policy

Consultation Question 15: Do you agree that the late night levy should be limited to recovery of these additional costs? Do you think that the local authority should be given some discretion on how much they can charge under the levy?

## CONSULTATION RESPONSES

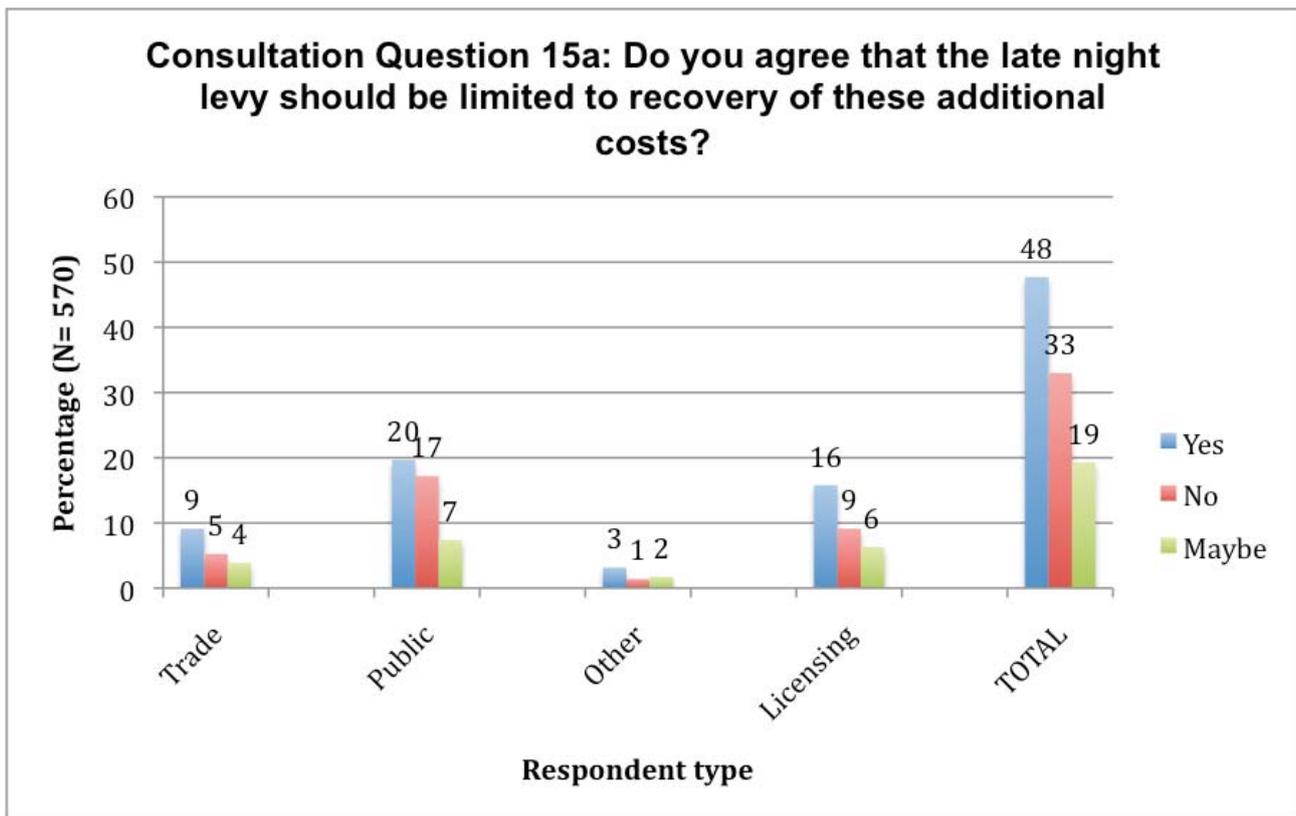
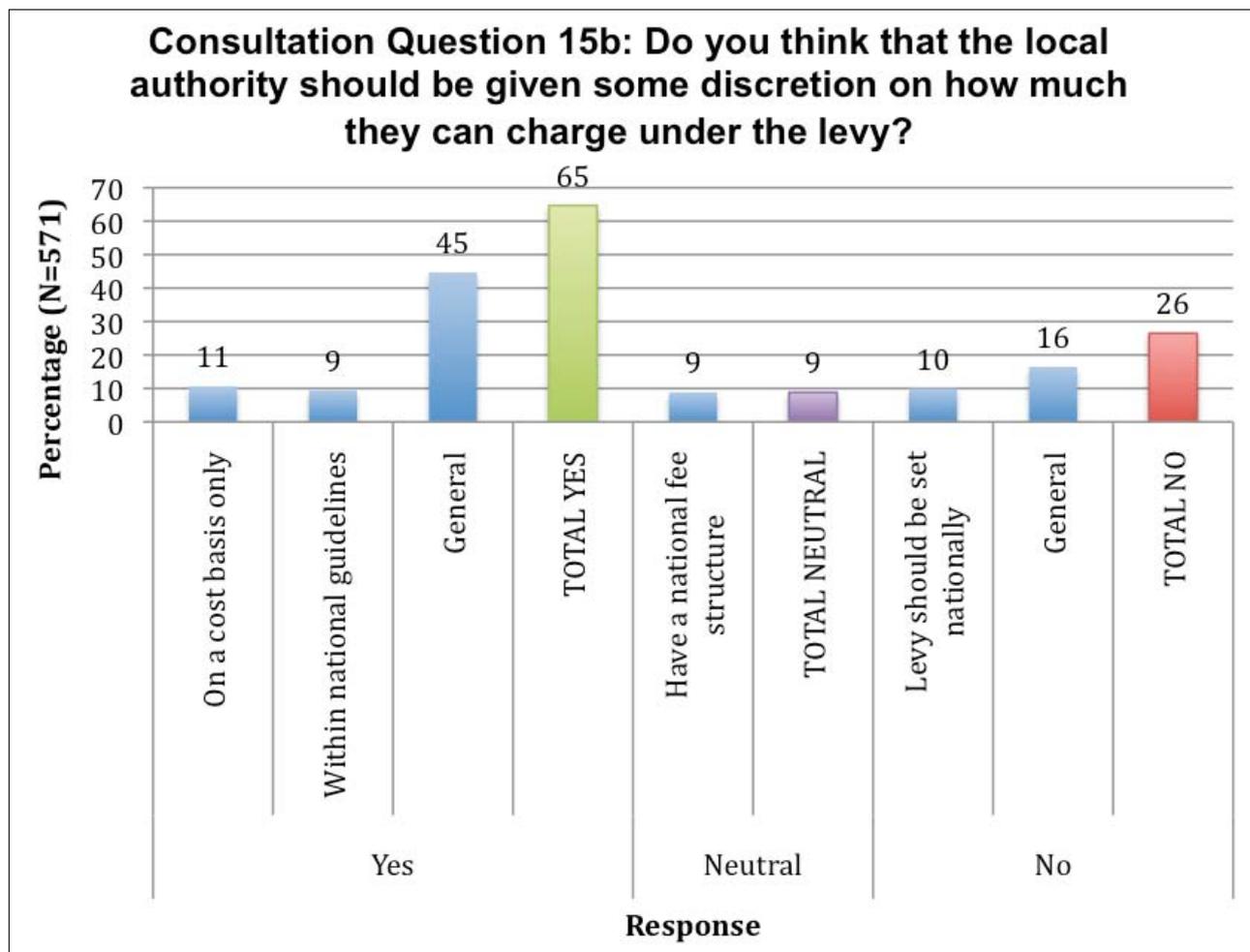


Figure 16



**Figure 17**

Broadly, this proposal was supported. Amongst those to support the measure, it was often with the caveat that there should be national parameters set to prevent local authorities from placing a high burden on businesses. Indeed, trade respondents expressed the most opposition to the proposal, stating that potentially the local authority may use the power to levy punitive rates on businesses.

*“The proposal to enable licensing authorities to charge a night time levy that would help to pay towards the costs of policing the night time economy would be welcome.”*

**(Licensing Authority Respondent)**

*“It is important that the local authority is given some discretion on how much they can charge under the levy because local areas are so different from each other and putting in place a blanket charge in effect be penalising London which generally has higher costs than other regions. We agree that additional costs of taxi marshalling or street cleaning and other linked activities should be funded by the late night levy.”*

**(Licensing Authority Respondent)**

*“There should be a nationally set minimum time after which the Late Night Levy could be applied to prevent Local Authorities abusing the power and introducing a Late Night Levy unnecessarily early.”* **(Trade Respondent)**

*“The late-night levy should not be introduced as it undermines existing successful partnership working (e.g. BIDs, Purple Flag) and we doubt paying for policing will achieve the Government’s objectives in this area. If there is to be a tax on business in this way, local authorities should*

*ensure that all of the money raised is passed to the police, there should be transparency and accountability as to how any money raised is utilised by the police/local authority and that the amount chargeable should be subject to a cap by central government.” (Trade Respondent)*

## NATIONAL EVENTS

Attendees suggested that the levy should apply equally to on and off-trade and that some trade representatives were very opposed to this proposal.

Some trade representatives thought that it would not be fair to allow the licensing authority to determine the amount of the levy and one cautioned that it was important to ensure that the levy was not just a revenue-raising tool for the police.

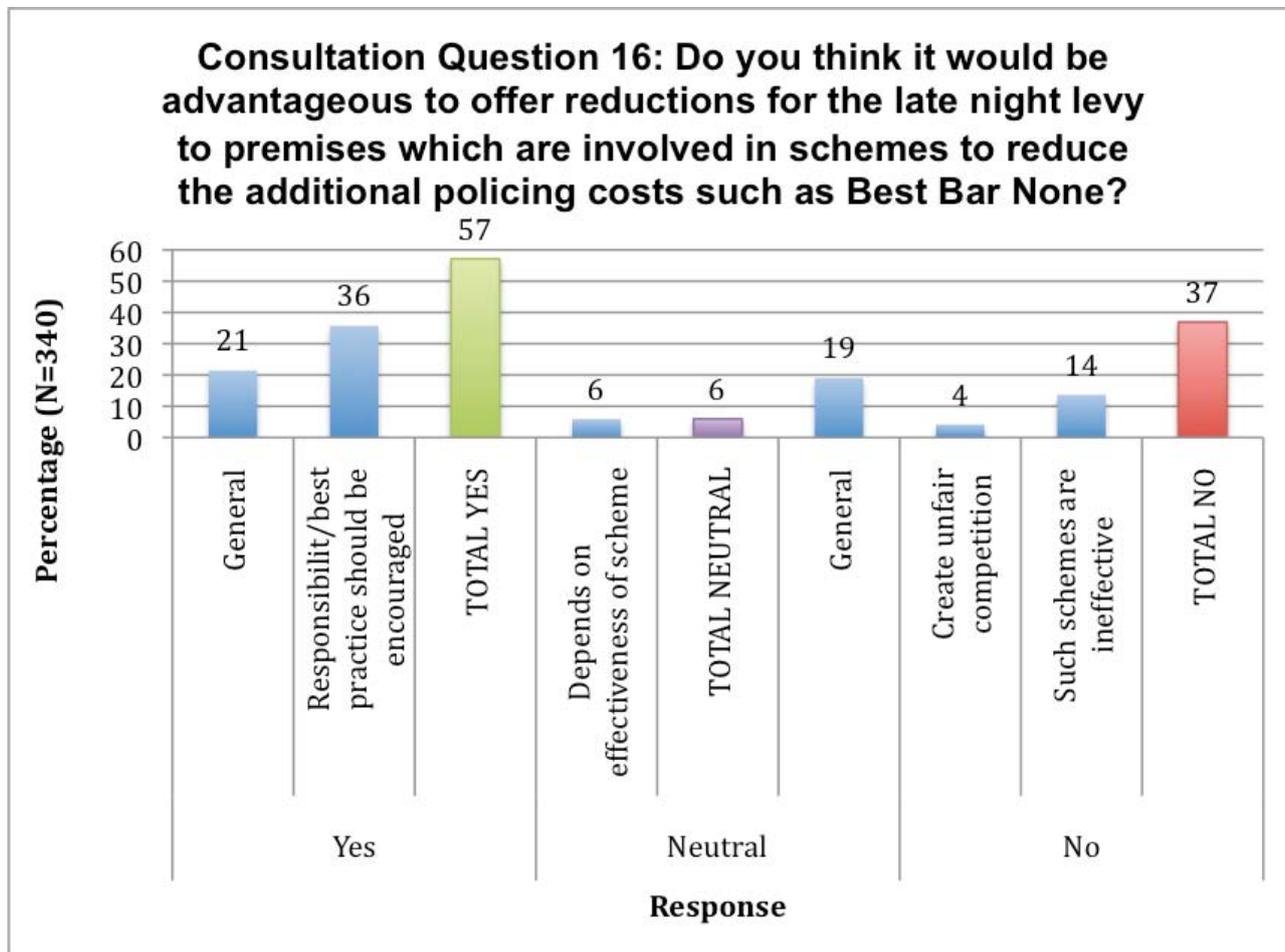
Police representatives raised some concerns about the burden of having to prove that they had received the money and also noted that there is a core demand for policing 24 hours and that the levy was unlikely to pay for more police officers rather it would just cover more overtime.

Police representatives suggested that the biggest costs for policing the night-time economy came from police overtime and that even if the levy were introduced, if police are cutting back on overtime this could be more problematic. Some police representatives suggested that they were looking at adjusting shift patterns to try and accommodate the needs of policing the night-time economy.

Some local government representatives suggested that the revenue should be available for more than just policing.

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

### CONSULTATION RESPONSES



**Figure 18**

This measure attracted broad support. However, public respondents expressed the most opposition to the measure: amongst these respondents, the effectiveness of schemes such as Best Bar None was regarded with skepticism.

*“While we understand the desire to give discounts for best practice initiatives, we are concerned that there is not an off trade accreditation scheme similar to Best Bar None... Any move to create discounts for best practice schemes must ensure that they take account of the situation of both the off and on trade. Otherwise there could be a situation where a local shop has to pay more towards the Late Night Levy than an inner-city bar. The issue of discounts again highlights that inappropriateness of included off-licences in scheme to tackle late-night alcohol-related disorder.”* **(Off-Trade Respondent)**

*“If a premises is already part of a BID, then it should be entirely exempt from the late night levy. The start time for any levy should be no earlier than midnight. We firmly believe that in areas where a BID is in place, there should be no question of a levy being raised.”* **(On-Trade Respondent)**

*“If the late night levy is introduced, this proposal is logical and there are circumstances*

*in which it could be applied beneficially e.g. reduction in levy for participation in Best Bar None, Pubwatch, provision of polycarbonate glassware etc. It would be an effective lever in negotiating with premises who have previously not embraced such issues.“*

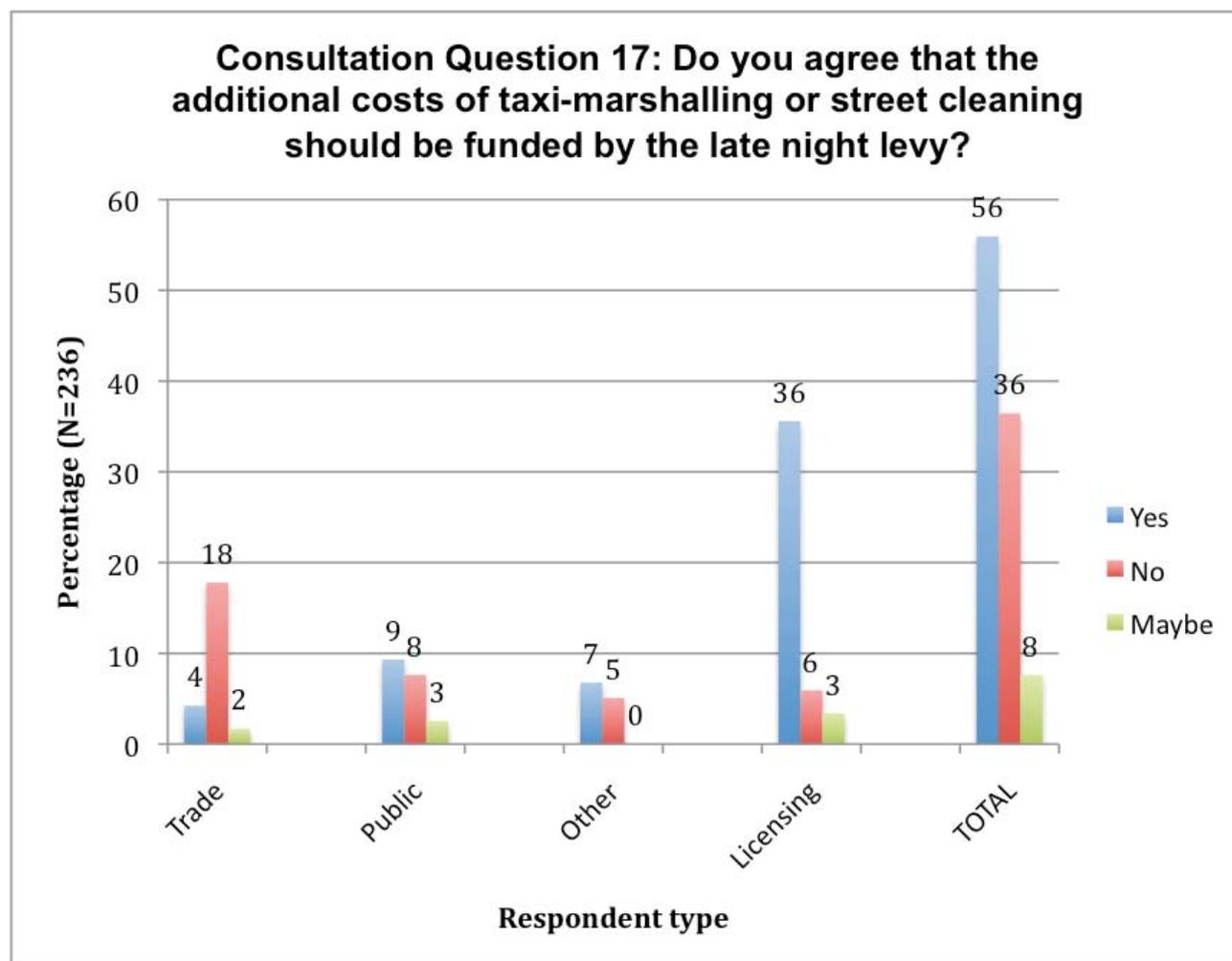
**(Licensing Authority Respondent)**

## NATIONAL EVENTS

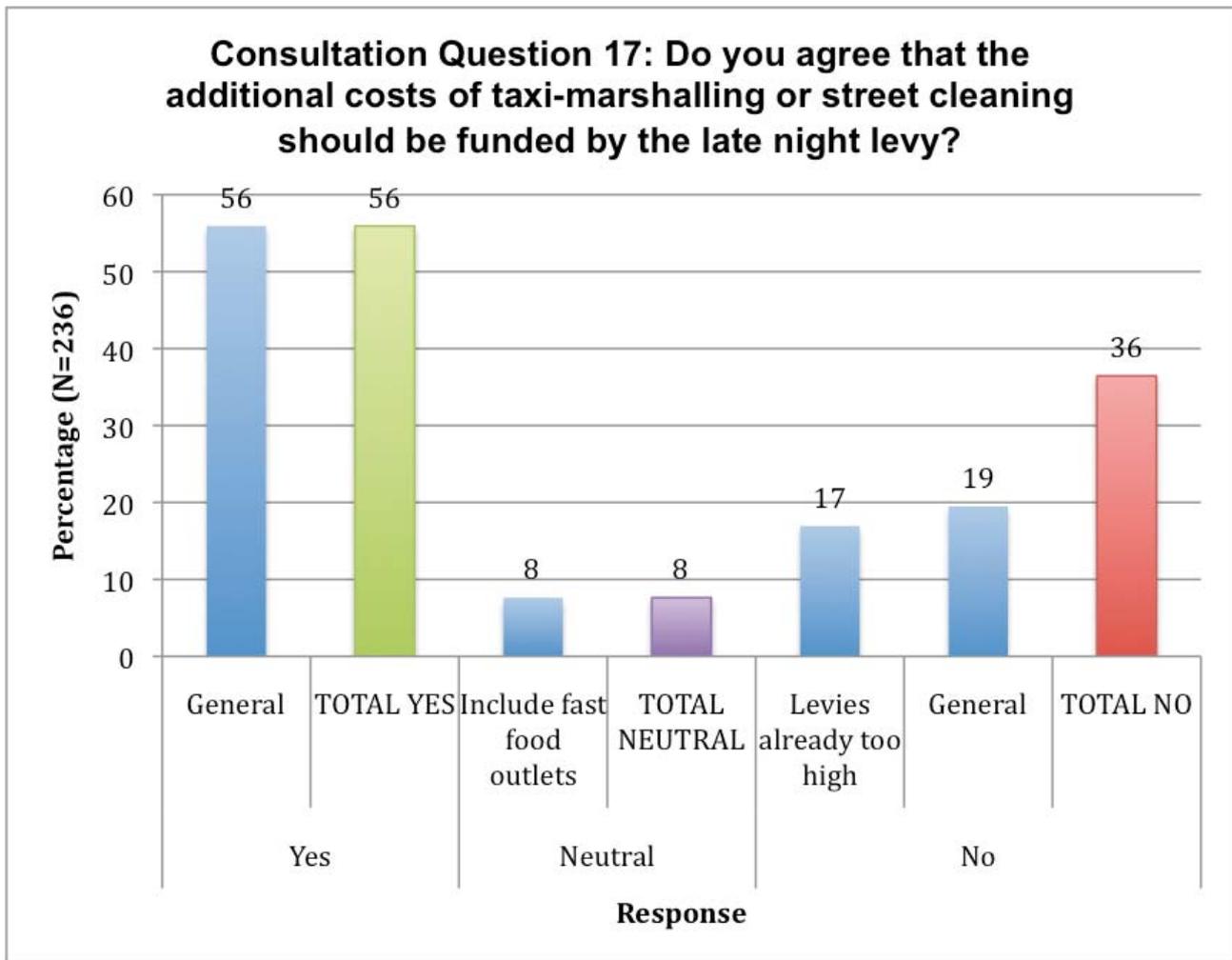
Trade representatives strongly expressed the view that discounts or exemptions should be offered to premises participating in good practice schemes such as Business Improvement Districts, Best Bar None and Purple Flag. Some trade representatives cautioned that if such discounts or exemptions were not offered these schemes would collapse.

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

### CONSULTATION RESPONSES



*Figure 19*



**Figure 20**

This proposal attracted wide approval (56%), particularly from public and licensing respondents (as shown in Figure 21). Trade respondents were concerned that the additional levy would be overly burdensome; many felt that such services should be part of their already high business rates.

*“[We] would welcome the levy being extended wider than purely the police however we would argue that policing should receive a significant percentage due to the high demands placed on them by the night time economy. However clearly the demands on health should also be a strong consideration. We would support the decision on how best to divide the levy through the agreement of all responsible authorities for the area.” (Police Respondent)*

*“Additional services such as street cleaning and taxi marshals etc should be funded by late night levy.” (Licensing Authority Respondent)*

*“We question whether it would be appropriate to use a levy on a specific business sub-set to provide more general services of this nature which benefits premises that trade during the day or early morning as well. If these services are required or deemed appropriate, then an application for a BID or the use of a supplementary business rate would be more appropriate to ensure that all businesses who benefit from the service contribute towards its cost. If the levy is to be used in this way then the charging mechanism must be similarly extended from just those businesses trading after a certain time.” (Trade Respondent)*

## NATIONAL EVENTS

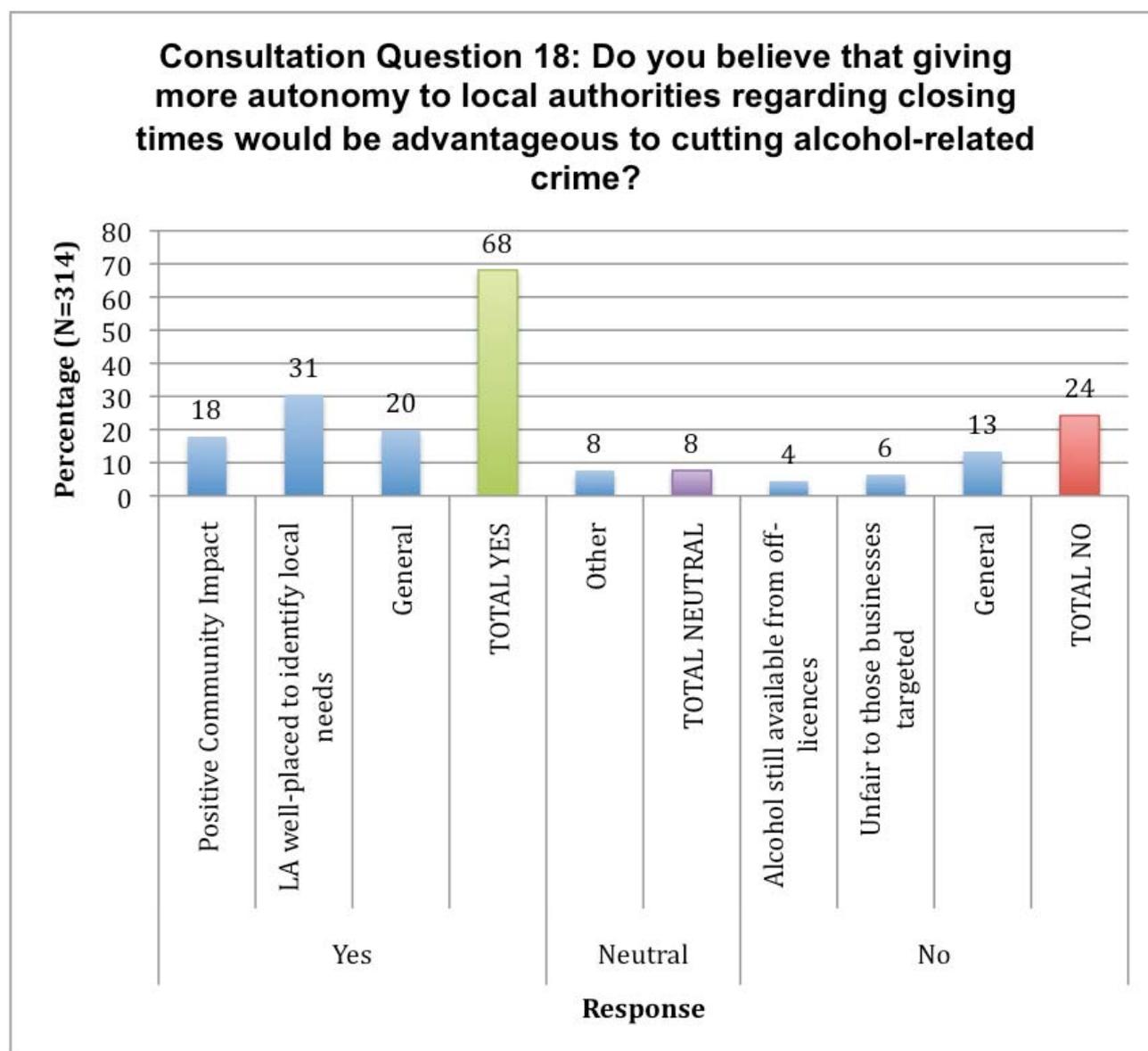
Trade representatives were clear that the levy, if applied, should apply to both on-trade and off-trade premises. Some representatives of the on-trade expressed the view that on-trade premises should not have to pay for problems caused by those drinking ‘cheap supermarket alcohol’. Some trade representatives also suggested that other businesses such as kebab shops that operate in the late-night economy, but do not serve alcohol, should also be included in the levy.

Representatives of the hotel, restaurant, casino, sports and voluntary sectors stressed that the late-night levy may have unintended consequences on their businesses which are largely operating without causing any problems.

Some legal representatives who attended the events questioned the legality of the late-night levy. Several trade representatives noted similarities with the social responsibility levy in Scotland and the complexities that have been involved in trying to introduce this levy.

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

### CONSULTATION RESPONSES



### **Figure 21**

Responses to this proposal were, once again, broadly positive. It was felt that the proposal would have a positive impact on communities in particular. Licensing respondents suggested that decisions should be evidence-based and in consultation with local residents. Amongst negative responses it was noted that off-licences continue to operate without the restrictions put on the on-licensed trade.

*“We would welcome the flexibility and empowerment of being allowed to implement licensing hours to suit the needs and requirements of local residents and businesses and to be able to react to advice and opinions given by responsible authorities such as the Police or environmental health noise officers as to what might be reasonable and appropriate fixed or staggered licensing hours within its area or within zones of its area.”*

**(Licensing Authority Respondent)**

*“Currently there are blanket regulations in place which have meant that local authorities have little say over closing times. If authorities had the autonomy to decide this, they could ensure that those premises that were problematic could close earlier and closely monitor those that might potentially become problematic.”* **(Licensing Authority Respondent)**

*“We do not consider that giving greater autonomy to local authorities regarding closing times would be necessarily beneficial to cutting alcohol related crime. Many licensing authorities operate a de facto fixed terminal hour in any event based on Police or EHO representations in response to any applications that go beyond that time even though it is not normally stated. CIPs also allow flexibility to apply core hours for premises within certain zones, as of course do local planning policies... One consequence of locally determined hours is the migration of people from one area to another in search of later hours which would certainly not assist in reducing alcohol related crime, given the difficulty of policing such movement and the additional opportunity it gives for conflict between individuals in the more unregulated street environment.”* **(Trade Respondent)**

*“No. It is contradictory to other policies mentioned in the document (e.g. EMROs) and would fundamentally undermine the Licensing Act in terms of local authorities taking control of what should be a decision for the business.”* **(Trade Respondent)**

## **NATIONAL EVENTS**

Several members of the on-trade expressed the view that the introduction of the 2003 Licensing Act has not resulted in a significant extension of licensed opening hours.

There was some support from police and community representatives for allowing licensing authorities to restrict opening hours and impose fixed closing times. Some community representatives expressed the view that this may reduce public nuisance, an area they felt has been given insufficient attention.

Several trade representatives raised concerns about how a return to committed hours would impact on business, particularly those who have already committed to late-night licences whose business may be restricted. A legal representative also noted that the proposal could result in job losses. One trade representative noted that the views of residents wanting a vibrant night-time economy should also be considered.

Some trade representatives were opposed to Early Morning Restriction Orders generally and some legal, trade, police and community representatives suggested that Early Morning Restriction Orders should be amended to allow for distinctions between different types of premises. One trade representative suggested they should only be applied to irresponsible premises.

A suggestion came from legal and trade representatives that using Cumulative Impact Policies to restrict opening hours may be a better approach. One local authority representative suggested that licensing authorities should make greater use of existing powers to restrict late-night drinking.

## REGIONAL EVENTS

The main themes emerging from comments inputted across the Regional Events in relation to this question were:

- The main benefits identified with this proposal were:
  - That it would help to reduce serious late night crime and disorder, especially in town and city centres
  - A few suggested that it would make it easier to police the night time economy
  - It was raised that this could make it simpler for local authorities to plan services such as street cleaning and public transport
  - *“This may reduce opportunities for people to drink excessively and so have health benefits, but there may be a risk of faster consumption”*
- The main risks associated with this proposal were:
  - Some felt that there were potential *“Human Rights implications”* in this proposal
  - Some felt that it was a retrograde step and that it would lead to “peak demand and flash points”, i.e. a “late night rush hour” for night clubs, taxis, kebab shops etc. and large numbers of drunk people coming into a town centre at the same time leading to violence
  - A number responded that they felt this would make some businesses unviable, especially those in the late night economy