

NORWICH CITY COUNCIL

Report for Resolution

Report To Licensing committee
8 December 2011

Report of Head of citywide services

Subject Police Reform and Social Responsibility Act 2011:
Amendments to Licensing Act 2003

5

Purpose

To inform members of the amendments to the Licensing Act 2003 contained in Part II of the Police Reform and Social Responsibility Act 2011.

Recommendation

That members note the report.

Financial Consequences

The financial consequences of this report are nil.

Corporate Objective/Service Plan Priority

The report helps to achieve the service plan priority of protecting the interests of the public through the administration of the licensing function.

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Background Documents

Police Reform and Social Responsibility Act 2011

1.0 Introduction

1.1 On 15 September 2011, the Police Reform and Social Responsibility Act received Royal Assent. Part II of this Act deals with amendments to the Licensing Act 2003, which are likely to come into effect between April and October 2012.

2.0 Amendments to the Licensing Act 2003

2.1 Amongst the changes to the Licensing Act 2003 as a result of the Police Reform and Social Responsibility Act 2011 coming into force, are:-

2.1.1 Making Licensing Authorities a Responsible Authority;

2.1.2 Reducing the evidential burden of proof that Licensing Authorities are expected to demonstrate when justifying their decisions (from being necessary for the promotion of the licensing objectives, to being appropriate for the promotion of the licensing objectives).

2.1.3 Increase the opportunities for local residents or their representative groups to be involved in licensing decisions, without regard to their immediate proximity to premises, i.e. there will be no definition of 'interested party', only 'other persons resident or having a business interest in the City'. It should be noted that Members have been removed as an interested party as a result of this change.

2.1.4 Enable more involvement of local health bodies in licensing decisions by designating health bodies as a Responsible Authority. There has been no change to the licensing objectives though, so public health can still not be considered.

2.1.5 Repealing the power to establish Alcohol Disorder Zones.

2.1.6 Substantial overhaul of the system of Temporary Event Notices (TENs) to:

- (a) give more time for objections to be raised;
- (b) enable local authorities, as the bodies responsible for prevention of nuisance, to object as a Responsible Authority; and
- (c) increase the notification period.

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

2.1.8 Introducing tougher sentences for persistent underage sales (from £10,000 to £20,000).

2.1.9 Extending the period of voluntary closure that can be given by the police as an alternative to prosecution.

2.1.10 Enabling some (or all) Licensing Authorities to set licence fees so that they are based on full cost recovery.

2.1.11 A significant amendment to allow local councils to decide between which hours they would like to prevent premises from opening, according to what they

believe to be most appropriate for their local area, through Early Morning Restriction Orders (between the hours of 12 midnight and 06:00am).

2.1.12 Enabling Licensing Authorities to charge a late night levy to help pay for the additional cost of policing the local night-time economy which arises as a result of the sale of alcohol, where this is deemed necessary. It should be noted that there are likely to be complex regulations to implement this and there could be cost implications.

2.2 Points 2.1.1 to 2.1.9 are likely to be implemented at the earliest in April 2012, and items 2.1.10 to 2.1.12 are likely to follow in October 2012.

2.3 There is a corporate officer group looking at the implication of these changes in relation to finance and service delivery, and a further report will be submitted to licensing committee in the future.

3.0 Home Office factsheets

3.1 Attached to the report are a number of factsheets issued by the Home Office which cover the amendments outlined above.

Police Reform and Social Responsibility Bill - March 2011

Making relevant licensing authorities responsible authorities

What is the policy aim?

The Coalition Agreement included a commitment to 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 in the local area.

What is a responsible authority?

Responsible authorities are public bodies that must be notified of new licence applications, reviews and other licensing functions. They are entitled to make relevant representations to the licensing authority in relation to the application for the grant, variation or review of such a licence.

Current responsible authorities in the Licensing Act 2003 are:

- The chief officer of police
- The fire authority
- The health and safety authority
- The local planning authority
- The environmental health authority
- Bodies recognised as being responsible for protection of children from harm
- Trading standards officers

What is a relevant representation?

These are written representations, about the likely effect of the grant of an application for, or variation to a premises licence or club premises certificate, on the promotion of the licensing objectives. Responsible authorities and interested parties, such as local residents, make representations regarding licensing functions. To be considered relevant, representations must have regard to the potential impact of the licensing determination on the promotion of the licensing objectives.

What is the proposed change to be made through the Bill?

We will make licensing authorities responsible authorities under the Licensing Act. This will empower them to refuse, remove or review licences themselves without first having had to have received a representation from one of the other responsible authorities listed above.

What are the advantages of giving licensing authorities this additional power?

This proposal will ensure that licensing authorities are better able to respond to the concerns of local residents and businesses by taking the necessary actions to tackle irresponsible premises without having to wait for representations from other responsible authorities.

What is the rationale behind this proposal and what evidence base was used?

This proposal will enable licensing authorities to take the necessary actions to tackle irresponsible premises without having to wait for representations from other responsible authorities. The Home Office conducted a 6 week public consultation exercise with a wide range of sectors including representatives from the on trade, off trade, police, health bodies and interested organisations.

Won't it mean that licensing authorities will be able to make a relevant representation regarding an application and determine the same application?

Yes. However, there is a precedent for this in the Gambling Act 2005 whereby different members of the licensing committee are required to fulfil different functions when determining an application. The Government has decided to follow this approach, and will specify in guidance that licensing committee members shall be allocated responsibility for different roles when determining a licence application. This will ensure that the same licensing officer is not responsible for acting as a responsible authority and making a determination on an application. Any actions taken will need to be justified on the basis of the promotion of the licensing objectives.

Main views of consultation respondents

A large number of consultation respondents supported this proposal, with some raising concerns this could lead to procedural unfairness. However, we are confident that this will not be the case since there will be a separation of responsibilities within the licensing authority to ensure the functions of acting as a responsible authority and determining the application cannot be exercised by the same individual. This regime is similar to that which operates effectively under the Gambling Act 2005.

Police Reform and Social Responsibility Bill - March 2011

Reducing the burden of proof on licensing authorities

What is the policy aim?

The Coalition Agreement included a commitment to overhaul the Licensing Act 2003 to give local authorities and the police much stronger powers to remove licences from, or refuse to grant licences to, any premises that are causing problems in the local area.

What is burden of proof?

When making decisions on new and existing licences, and fulfilling their licensing responsibilities, licensing authorities are currently required under the Licensing Act 2003 to demonstrate that these decisions are 'necessary' for the promotion of the licensing objectives in their local area.

The four licensing objectives are:

- The prevention of crime and disorder;
- Public safety;
- The prevention of public nuisance;
- The protection of children from harm.

The requirement to demonstrate that their actions are 'necessary' places a significant evidential burden on the licensing authority to prove that no lesser steps would suffice for the promotion of the licensing objectives in the local area. This is a consequence of statutory references to actions having to be "necessary", and which is therefore reflected in statutory guidance, and has become custom and practice. The guidance states that licensing authorities should ensure that any conditions that they impose are only those which are necessary for the promotion of the licensing objectives, which means that they must not go further than what is needed for that purpose.

What are the proposed changes to be made through the Bill?

The wording will be amended throughout the Licensing Act 2003 to lower the evidential threshold which licensing authorities must meet when making licensing decisions by requiring that they make decisions which are 'appropriate' rather than necessary for the promotion of the licensing objectives. This will, for example, give licensing authorities greater power to tackle irresponsible premises.

How is appropriate defined? What is the difference between a change being necessary and appropriate?

The statutory guidance will be amended to provide licensing authorities with advice on how to determine if an action is 'appropriate'. Licensing authorities will be required to demonstrate that their actions are 'appropriate' to promote the licensing objectives in that the actions are suitable for the particular condition, occasion or place. This provides some flexibility to consider the effects of the decision on the promotion of the objectives. The current requirement to demonstrate that actions are 'necessary' requires that licensing authorities demonstrate that no lesser steps would suffice for the promotion of the licensing objectives in their area which is a greater evidential hurdle.

A decision that is 'appropriate' for the promotion of the licensing objectives provides some flexibility to consider the effects of the decision on the promotion of the objectives. It may therefore be decided to take steps that are suitable for, rather than necessary to, the promotion of the objectives. It provides an element to deal with reluctance or resistance, to enable local communities to assert themselves properly in relation to this particular approach.

Won't reducing the burden of proof for licensing authorities mean they can make whatever decision they want without having to justify it?

No. Under the new proposals licensing authorities will still have to justify that any action they take is 'appropriate' for the promotion of the licensing objectives, and consider relevant representations from other responsible authorities and interested parties. Determinations will still have to be evidence based, limited to the parameters set by the licensing objectives and have regard to the impact of other legal responsibilities on the employer or operator; whether any conditions being imposed can feasibly be met and the impact of the conditions on promoting other licensing objectives.

Main views of consultation respondents

This proposal was supported by large numbers of respondents. Respondents were keen to ensure that appropriate safeguards were in place to ensure that all decisions were fair. Whilst the evidential hurdle is being lowered, determinations will still have to be evidence based and give regard to the impact of other legal responsibilities on the employer or operator; whether any conditions being imposed can feasibly be met and the impact of the conditions on promoting other licensing objectives.

Police Reform and Social Responsibility Bill - March 2011

Increase the opportunities for local residents or their representative groups to be involved in licensing decisions by removing the vicinity test for interested parties**Who is an 'interested party'?**

The Licensing Act 2003 allows local residents to raise concerns regarding new licence applications or existing licensed premises. Local residents are classed as interested parties under the Licensing Act 2003, and as such are able to make relevant representations to licensing authorities about the impact of licensed premises on the promotion of the licensing objectives in their area.

Interested parties are defined within the Licensing Act 2003 as:

- A person living in the vicinity of the premises
- A body (e.g. a residents association) representing people that live in that vicinity
- A person involved in a business in the vicinity of the premises
- A body (e.g. a trade association) representing people involved in businesses in the 'vicinity' of the premises

What is vicinity?

The Licensing Act 2003 does not define 'vicinity'. Under current legislation licensing authorities use their discretion to set the 'vicinity' in their licensing area. This means that local residents living in the 'vicinity' can make a representation to the licensing authorities as an interested party. Local residents who live outside the 'vicinity' of licensed premises will be unable to make a representation as an interested party even if they may be able to justify that they are affected by those licensed premises.

What is the policy aim?

We will reduce any uncertainty amongst residents or other persons as to whether or not they are in the 'vicinity' of a premises, and therefore whether they are able to make relevant representations. This will be achieved by removing the requirement to show 'vicinity'. This means that any person, body or business will be able to make a relevant representation in relation to a premises, regardless of their geographic proximity.

What is the proposed change to be made through the Bill?

We will remove the 'vicinity' test. Given that interested parties are defined with reference to 'vicinity', this term will become redundant and the definition of interested parties will be removed from the Licensing Act 2003.

In addition, we will introduce a requirement to publish key information on licence applications on the relevant licensing authority's website. This will ensure that interested parties are aware of new (and other) licence applications and have access to the relevant information.

Doesn't removing the 'vicinity' test mean that anyone will have the right to make a relevant representation on a licensing application? Won't this just place an increased burden on licensing authorities to have to deal with unnecessary representations?

No, representations will still need to be relevant and relate to one or more of the licensing objectives. Existing safeguards to protect against vexatious, frivolous or repetitious representations will also still be in place.

Doesn't this proposal mean that competitors will be able to make representations against new premises that might introduce more competition into the local area?

Businesses, residents and bodies will be entitled to make representations against (or for) a new or existing premises licence. However, they will need to demonstrate that their representations relate to the promotion of one or more of the licensing objectives. A representation submitted on the basis of local competition would not be relevant and may be considered 'vexatious' by the licensing authority.

Main views of consultation respondents

Although criticisms were raised during the consultation that this proposal could lead to an increase in frivolous and vexatious representations, many respondents welcomed greater community involvement in the licensing process and acknowledged that licensed premises can have an effect beyond their immediate 'vicinity'. Whilst we understand the concern raised by respondents, we will mitigate any adverse impacts by amending the guidance to set out more clearly what is classed as relevant, frivolous and vexatious representation. We believe that this proposal will encourage greater community involvement in local licensing decisions.

Police Reform and Social Responsibility Bill - March 2011

Making local health bodies responsible authorities

What is a responsible authority?

Responsible authorities within the Licensing Act 2003 include police, fire authorities, health and safety authorities, local planning authorities, environmental health, bodies responsible for protecting children from harm and any licensing authorities (other than the relevant licensing authority) in whose area a premises is situated.

Responsible authorities are able to make relevant representations regarding new licence applications and request reviews of existing licences. To be considered relevant, representations must have regard to the potential impact of the licensing determination on the promotion of the licensing objectives.

Responsible authorities have significant power within the Licensing Act 2003 as the licensing authority must hold a hearing to consider any relevant representations made and must consider these representations when making its determination. A relevant representation could lead to conditions being imposed upon the licence, or the licence being refused or revoked.

What are the key changes that will be made through the Bill?

We will make local health bodies responsible authorities. This will include a Primary Care Trust or, in Wales, a Local Health Board for an area any part of which is in the licensing authority's area

What does health have to do with licensed premises?

Drunkenness can lead to accidents and injuries, which cause A&E attendances. These incidents are often traceable to individual premises and fall under the 'Public Safety' objective in the Licensing Act.

There is some evidence that the density of premises and the hours of sale in an area can also influence the local population's alcohol consumption and the level of alcohol-related ill health, over time.

What are the intentions of these policies?

At present, the determination of licensing decisions gives little consideration to the views of local health bodies as they are not included as responsible authorities in the Licensing Act. This means that they are unable to make representations to the local licensing authorities regarding concerns about the impact of new licensed premises on the local NHS (primarily A&E

departments and ambulance services) or more generally the safety of the public within the night-time economy.

Making health bodies responsible authorities will ensure that the safety of the public within the night time economy is taken into consideration for new and existing licence applications.

What were the main views of the consultation respondents?

Consultation respondents were broadly supportive of this proposal and recognised the value of considering information such as local A&E statistics when making licensing determinations although some respondents questioned the ability of health bodies to provide representations specific to individual premises. Whilst we acknowledge this, we believe it is vital for Primary Care Trust's and Local Health Bodies to be able to influence licensing decisions by making relevant representations. Such impacts may include public safety issues, reflected in stretching A&E resources and over-burdening of staff. These representations will still need to be made in relation to the existing licensing objectives and we are confident that local health bodies will be able to do this.

We also see merit in the proposal to make the prevention of health harm a material consideration in the Licensing Act 2003. We want to ensure that this is considered alongside wider work to address the harm of alcohol to health. Accordingly, we do not intend to legislate at this stage but will consider the best way to do so in the future.

Police Reform and Social Responsibility Bill - March 2011

Temporary Event Notices

What is a Temporary Event Notice?

A Temporary Event Notice is a notification to the licensing authority that an individual intends to carry on licensable activities for a period not exceeding 96 hours.

What is the process for obtaining a Temporary Event Notice?

A Temporary Event Notice must be sent to the licensing authority and the police at least ten working days in advance of a planned event. Only the police can object to a Temporary Event Notice on crime and disorder grounds. The police have two working days after the receipt of the Temporary Event Notice to object, and (unless the premises user agrees to modify the Temporary Event Notice) the licensing authority must hold a hearing to consider any objection that has been received. If the licensing authority decides that the objection is valid, it must issue a counter notice to the applicant at least 24 hours before the beginning of the event to prevent it going ahead.

Recent changes to Temporary Event Notices

On 19 July 2010 the Government amended the Licensing Act 2003 by a Legislative Reform Order (LRO) to extend the police objection period from 48 hours to two working days. The new arrangements, which came into force in October 2010, ensure that the police always have two full days to object to a Temporary Event Notice, even when it is submitted at the weekend or over a Bank Holiday. Restrictions on the use of LROs meant that it was not possible to use this mechanism to make more wide-ranging changes.

What are the key changes that will be made through the Bill?

- We will extend the right to object to a Temporary Event Notice to the environmental health authority.
- We will allow the police and environmental health officers to object to a Temporary Event Notice on the basis of all of the licensing objectives.
- We will give the police and environmental health officers three working days to object to a Temporary Event Notice.
- We will give licensing authorities discretion to apply existing licence conditions to a Temporary Event Notice if there are objections from the police or environmental health authority.

- We will allow late Temporary Event Notices (i.e. those submitted less than ten working days but at least 5 days before the beginning of the event), unless the police or environmental health officers object.
- We will relax the statutory limits on the duration of a single temporary event from 96 hours to 168 hours, and on the total annual availability covered by a Temporary Event Notice in relation to a single premises from 15 days to 21 days.

What is the justification for making these changes?

We are making these changes in response to concerns expressed by our key partners including residents' associations, the police, licensing authorities, arts and voluntary organisations and circuses.

Why has the maximum length of a temporary event been increased? Why was 96 hours insufficient?

Touring theatres, circuses and voluntary groups told us that they were losing business and income by having to break for 24 hours half way through a week long event. The new limit of 168 hours will allow these organisations to run events for a week without a break.

Who will benefit from these proposals?

- Residents - who will be given more protection from noise, crime and disorder and unsafe conditions at temporary events.
- The environmental health authority which will be able to object to temporary events.
- The police and environmental health authority - which will have longer to consider a Temporary Event Notice and place any objections.
- Touring theatres, circuses and voluntary organisations which will gain extra business and income by being able to run events for a week without a break,
- Anyone (but particularly voluntary organisations and circuses) - who will still be able to put on temporary events (subject to annual limits) if they miss the 10 day deadline.

What are the main views of consultation respondents?

There was a mixed response to these proposals with residents, the police and licensing authorities asking for greater restrictions on temporary events and the arts and third sector organisations requesting a relaxation of some of the current limits and controls. Our proposals aim to strike a balance between these views by imposing stricter controls when a temporary event is notified

(e.g. to allow environmental health authorities to object and give them and the police more time to do so), but relaxing some of the limits and allowing a limited number of late Temporary Event Notices.

Police Reform and Social Responsibility Bill - March 2011

Enable licensing authorities to suspend licences due to non-payment of fees

What is the policy aim?

We are committed to reducing the burden and bureaucracy of licensing and will strike the right balance between the requirements on businesses, the cost to the taxpayer and helping the police and other enforcement agencies address alcohol related crime and disorder. This policy will ensure that licensing authorities do not face additional costs as a result of licence holders not paying their annual fees.

What changes are being proposed through the Bill?

We will make provision for licensing authorities to suspend licences due to non-payment of fees. This will provide a much stronger incentive for businesses to pay their fee in a timely manner and save licensing authorities the time and cost of pursuing non-payment. This measure will not impact on responsible businesses that pay their licence fees on time.

There will be a grace period of 21 days for licence holders to pay their fee. The licence will be reinstated as soon as the fee is paid and the licensing authority must notify the licence holder when their licence has been reinstated.

If an administrative error has occurred or there is a dispute about liability to pay a fee, a cannot be suspended under this provision.

What are the benefits to this proposal?

This is a simple change that could save local authorities many thousands of pounds currently spent in recovering unpaid annual fees through councils' own recovery sections and bailiffs. An effective precedent can be found for this approach in the Gambling Act 2005.

Main views of consultation respondents

This proposal received strong support from the vast majority of consultation respondents. This change is hugely welcomed by local authorities who have faced significant costs in the past trying to recover unpaid licence fees.

Police Reform and Social Responsibility Bill - March 2011

Persistently selling alcohol to children

What is our aim?

The Coalition Agreement included two commitments to reduce persistent under-age alcohol sales. These were:

- We will double the maximum fine for under-age alcohol sales to £20,000
- We will allow councils and the police to shut down permanently any shop or bar found to be persistently selling alcohol to children

The intention of the following policy proposals is to deliver the above Coalition Commitments and take tough action against those persistently selling alcohol to children.

What classifies as persistently selling alcohol to children?

Persistently selling alcohol to children is defined as when a licence holder is found to be selling alcohol to children two or more times within a three month period.

What are the current penalties for those persistently selling alcohol to children?

Currently there are three routes of action that can be taken against those found to be persistently selling alcohol to children.

1. The licence holder can plead not guilty and go to court where if prosecuted they can be given a fine of up to £10,000 (for the premises licence holder) with up to 3 months suspension of their alcohol licence.
2. As an alternative to prosecution the police or trading standards officers can give the licence holder the option to voluntarily accept a 48 hour closure notice rather than face criminal liability.
3. The police can make a representation to the relevant licensing authority to ask them to review the licence. This can also happen in addition to options 1 and 2.

How often are these penalties used?

In 2009/10 two licences were suspended by a court for persistently selling alcohol to children. A 48 hour closure notice for persistently selling alcohol to

children was issued by police or trading standards officers 100 times in 2009/10. It is not clear how many reviews have been conducted following a licence holder being found to have been persistently selling alcohol to children.

To date, the full £10,000 fine has not been issued and licence holders are more likely to accept voluntary closure rather than going to court where if convicted they would face the fine of up to £10,000 and potentially a closure order for up to 3 months.

What are the key changes that will be made through the Bill?

- We will double the maximum fine for persistently selling alcohol to children from £10,000 to £20,000.
- We will extend the period of voluntary closure that can be issued by the police or trading standards officers as an alternative to prosecution to impose a minimum closure period of 48 hours and maximum closure period of two weeks. Police will be able to apply this flexibly to take into account the nature of the premises.

What are the intentions of these policies?

The aim of these policies is to deliver the above Coalition Commitments and take tough action against those persistently selling alcohol to children. Alongside doubling the maximum fine, extending the period of voluntary closure will ensure that this is not seen as a softer option. Amending the Statutory Guidance to state that all licences will be reviewed where the licence holder is found to be persistently selling alcohol to children and making the presumption will be that the licence will be revoked at review will encourage licensing authorities to make greater use of these powers.

Are any other policy changes being made in this area?

- The Statutory Guidance issued under section 182 of the Licensing Act 2003 will be amended to state that the premises licence should be reviewed in all cases where the premises is found to be persistently selling alcohol to children and the presumption at review is that the licence will be revoked.
- Alongside these changes we will work with the Sentencing Council and the Crown Prosecution Service to encourage greater use of powers to prosecute those found guilty of persistent underage selling.

Police Reform and Social Responsibility Bill**Locally set fees under the Licensing Act 2003**

April 2011

What does the change mean?

The Government has introduced an amendment to the Police Reform and Social Responsibility Bill that will allow the Secretary of State to introduce locally-set licensing fees. The level of each fee category would be set by the licensing authority to whom it is payable, based on cost recovery. The amendment preserves the power of the Secretary of State to set fees.

What is the policy aim?

The policy aim is to ensure that fees recover the full costs of local licensing authorities in exercising their functions under the Licensing Act. The current fees were intended to achieve the same aim, but they have not been increased since the Act was introduced in 2005.

Who will be affected?

Locally-set fees will affect all those paying fees under the Licensing Act, including applicants for premises licences and club premises certificates; holders of licences and certificates; and those using Temporary Events Notices (TENs). Licensing authorities will also have a new duty to set fees.

What will the new fees be, and what costs will be included?

Fees will be set locally by licensing authorities, on a cost recovery basis. The licensing authority will set only the level of each fee category as set out in regulations, rather than designing their own fee structure. The costs recovered will be those of the licensing authority in exercising its functions under the Act, not the wider costs of, for example, managing the late night economy or policing. We will provide Statutory Guidance to licensing authorities on what can and cannot be included in their costs for the purposes of calculating fees.

Will there be a maximum fee level?

To reassure fee-payers that the fees will not be a 'blank cheque' for licensing authorities, a nationally-set cap for each fee category will be imposed in regulations. We will consult on the appropriate level of the cap before we introduce the regulations. The Secretary of State will issue guidance to

licensing authorities on setting the fees, and on the principles of good regulation (including risk-based and targeted inspection).

Will small businesses and not-for-profit members' clubs be hit by massive increases? What will happen to the current "fee band" structure for applications, annual fees, and full variations, which is based on rateable value?

Our current intention is that locally-set fees will retain the 'fee bands' based on rateable value, as this is fairer to smaller businesses and small members' clubs than a flat rate for all fee-payers. We will consult before bringing in regulations governing the fee band structure.

Will small businesses / not-for-profit members' clubs / sports clubs be exempt from locally-set fees?

The principle under which fees are changed will remain one of full cost recovery. If some premises types were exempt in a full cost recovery regime, this implies that other fee-payers would be charged more for the administration of their licence. This would be an unfair form of taxation.

When will locally-set fees be introduced?

We intend to consult further on the details of the proposal, including the maximum level for each fee. We expect to be in a position to lay the regulations bringing in locally-set fees in October 2012.

What were the views of consultation respondents on the proposal?

The "Rebalancing the Licensing Act" consultation, held between 8 July and 28 September 2010, requested views on our proposal to "enable local authorities to increase licensing fees so that they are based on full cost recovery." The proposal received broad support, as described in the consultation analysis, published on 30 November 2010.

Police Reform and Social Responsibility Bill - March 2011

Extend Early Morning Restriction Orders so they can be applied flexibly between midnight and 6am

What is the policy aim?

The Coalition Agreement included a commitment to overhaul the Licensing Act 2003 to give local authorities and the police much stronger powers to remove licences from, or refuse to grant licences to, any premises that are causing problems in the local area.

The intention of these policy proposals is to extend the flexibility of Early Morning Restriction Orders to provide licensing authorities with an additional tool to shape and determine local licensing.

What is an Early Morning Restriction Order?

An Early Morning Restriction Order is an uncommenced power within the Licensing Act 2003 that will allow licensing authorities to restrict sales of alcohol in the whole or a part of their areas for any specified period between 3am and 6am if they consider this appropriate for the promotion of the licensing objectives. This applies to premises licences, club premises certificates and temporary event notices.

What are the key changes that will be made through the Bill?

1. We will amend the provisions with regard to Early Morning Restriction Orders in the Licensing Act 2003 to allow licensing authorities to decide which hours they would like to prevent premises from selling alcohol, between 12am and 6am, in accordance with what they consider to be most appropriate for their local area.
2. Licensing authorities will be able to make Early Morning Restriction Orders if they consider this to be appropriate (and not necessary, as they must do now) for the promotion of the objectives.

What are the intentions of these policies?

Many residents and resident groups have told us that the night-time economy makes certain parts of the town no-go areas at night and anti-social behaviour associated with late night drinking extends into residential communities not just around licensed premises. We are committed to ensuring that licensing authorities and enforcement agencies are given the right tools to address the problems in their area whilst promoting a healthy night-time economy to benefit business and the community that they serve.

What evidence will licensing authorities need to make an Early Morning Restriction Order?

The licensing authority will need to be satisfied that an EMRO is appropriate for the promotion of the licensing objectives in a particular area.

Won't allowing licensing authorities to impose Early Morning Restriction Orders result in unfair restrictions on responsible retailers?

Licensing authorities will have to advertise the proposed order and hold a hearing to consider any representations before making an Order. This gives responsible retailers an opportunity to submit evidence against an Early Morning Restriction Order being imposed. It will also be possible to exempt certain types of premises from Early Morning Restriction Orders in secondary legislation. These would typically include premises such as hotels and casinos that generally operate responsibly and do not contribute to alcohol related crime and disorder and public nuisance late at night.

How wide an area will the Early Morning Restriction Order be able to apply to?

An Early Morning Restriction Order may only be applied to the whole or part local authority area – if the licensing authority considers this is appropriate for the promotion of the licensing objectives.

Main views of consultation respondents

This proposal received widespread support with many residents and resident groups informing us that the night-time economy makes certain parts of the town no-go-areas at night and anti-social behaviour associated with late night drinking extends into residential communities not just around licensed premises. We are committed to ensuring that licensing authorities and enforcement agencies are given the right tools to address the problems in their area whilst promoting a healthy night-time economy to benefit business and the community that they serve.

Police Reform and Social Responsibility Bill - March 2011

Late night levy**What is the late night levy?**

The late night levy is a power for licensing authorities to introduce a charge for premises that have a late alcohol licence. Whether or not to implement the levy will be left entirely at the discretion of the licensing authority that will make the decision based on the situation in their local area. In the areas that it is introduced the levy will be collected annually and the revenue will be split between licensing authorities and the police.

What is the policy's aim?

To permit licensing authorities to charge those businesses that benefit from trading alcohol in a safe late-night economy for the extra enforcement costs that the night-time economy generates for police and local authorities.

Why is the late night levy needed?

We cannot avoid the status of alcohol as a controlled substance and the impact of alcohol related crime and disorder. Businesses profit from selling alcohol in a late night economy that is safe by virtue of the considerable police and licensing authority resources dedicated to mitigating crime and disorder.

The problems caused by the late night economy are particularly costly for the taxpayer as the increased need for a police presence on the streets late at night requires expensive overtime arrangements to be made. We believe it is right that those businesses which profit by selling alcohol in the night time economy contribute towards these costs, rather than relying on other taxpayers in the community to bear the full costs.

Who will the late night levy affect?

In areas where the licensing authority decides to apply the levy it will affect all premises (both in the on-trade and the off-trade) that are licensed to sell alcohol during the hours to which the levy applies. It will be up to the licensing authorities to decide the time at which the levy applies in their area, although it will be restricted to applying between the hours of midnight and 6am.

We will consult with interested parties over the summer to define categories of premises that may be subject to reductions in their levy charge or indeed be exempt from the levy in its entirety.

For example, it may be appropriate for the licensing authority to be able to offer exemptions or discounts to members of best practice schemes such as Business Improvement Districts in order to help encourage responsible

trading. Further, there may be types of premises - such as certain hotels with a late night licence for mini-bars in rooms - who do not benefit from the policing of the late night economy.

There will be hotels whose guests drink in the hotel bar or at functions, such as weddings and parties, who go out later in the evening and benefit from the policing of the late night economy. And there may be bars who are members of best practice schemes but who are not fulfilling their duties under these schemes. For these reasons, the categories of exemptions and reductions will be optional so that licensing authorities have the discretion to decide what is appropriate for their own circumstances.

We will specify in secondary legislation the categories of business to whom licensing authorities may be able to grant an exemption and or reduction.

What will be charged under the late night levy?

Premises are split into bands based upon their rateable value to determine how much they pay under the levy. This system applies to the existing licence fee and means that larger businesses will make greater contributions to the levy than smaller ones.

The late night levy will be set at a national level. While the final detail will be confirmed in secondary legislation we currently anticipate the following charge to be issued under the late night levy:

Rateable value bands	A	B	C	D	E	Dx2 Multiplier applies to premises in category D that primarily or exclusively sell alcohol	Ex3 Multiplier applies to premises in category E that primarily or exclusively sell alcohol
Annual levy charge	No rateable value to £4,300 £299	£4,301 to £33,000 £768	£33,001 to £87,000 £1,259	£87,001 to £125,000 £1,365	£125,001 and above £1,493	£2,730	£4,440

A multiplier is added to premises in the Bands D and E that primarily or exclusively sell alcohol. This will ensure that larger pubs and clubs contribute more to the levy than restaurants and theatres which may serve alcohol, but are likely to have a smaller impact on late-night crime. Further, businesses selling alcohol benefit from doing so in a safe late night economy.

Why is the late night levy not targeted at individual premises?

The costs caused by the night time economy are often not directly linked to particular businesses but instead occur as a result of the night-time economy

as a whole – for example a fight may take place between groups of individuals who have each visited a variety of different premises over an evening.

The levy will allow licensing authorities to charge all premises that benefit from the existence of the night-time economy through selling alcohol beyond midnight to contribute towards covering the costs that it causes the community.

Will this not put more community pubs out of business?

Many community pubs will not have licences to open beyond midnight - as the earliest the levy will only apply is from midnight, such premises will not face any costs related to the levy.

Furthermore, premises that do not want to pay the levy will be able to change their opening hours free of charge to avoid being required to do so. This will enable all premises to make an informed decision on whether to remain open and pay the levy, balancing the extra charge against the revenue they would be likely to raise from remaining open past midnight.

Main views of consultation respondents

Many residents and resident groups informed us that the night-time economy makes certain parts of the town no-go-areas at night and anti-social behaviour associated with late night drinking extends into residential communities not just around licensed premises. We are committed to ensuring that licensing authorities and enforcement agencies are given the right tools to address the problems in their area whilst promoting a healthy night-time economy to benefit business and the community that they serve.