

NORWICH CITY COUNCIL

Report for Resolution

Report To Licensing Committee

19 June 2008

ITEM

5

Report of Head of Legal & Democratic Services

Subject Evaluation of the impact of the Licensing Act 2003

Purpose

To inform members of the report issued by the Department for Culture, Media and Sport (DCMS), evaluating the impact of the Licensing Act 2003.

Recommendation

That members note the report.

Financial Consequences

The cost associated with implementing the Licensing Act 2003 is met from existing budgetary provision. Fee income does not cover all cost associated with running this service.

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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1.0 Introduction

1.1 The Licensing Act 2003 (“the 2003 Act”) made provision for the regulation of the sale and supply of alcohol, the provision of regulated entertainment and the provision of late night refreshment and for offences relating to alcohol and connected purposes.

1.2 The Act brought together eight separate licensing regimes into one and in so doing transferred the regulation of the sale of alcohol from licensing justices and magistrates’ courts to licensing authorities, which are in virtually all cases the local authorities.

1.3 The Government undertook to review the implementation and impact of the 2003 Act after it came fully into force on 24 November 2005. The then Secretary of State wrote in the foreword to her Guidance to Licensing Authorities issued in July 2004:

‘We will monitor the impact of the 2003 Act on crime and disorder and the other licensing objectives. If necessary in the light of these findings, we will introduce further legislation with the consent of Parliament to strengthen or alter any provisions.’

1.4 The Government put in place a programme of projects to evaluate the impact of the new regime. That programme of evaluation is now complete and DCMS has issued a report outlining the main conclusions from that work.

2.0 Evaluation programme

2.1 As well as working with stakeholders to look at the implementation of the Act in general, the Government put in place specific projects to focus on key areas of concern that were being raised in the run up to implementation, such as crime and disorder, licence fee levels and the impact on live music.

2.2 The elements of the evaluation programme were:

- **Home Office evaluation of the impact on levels of crime and disorder**
<http://www.culture.gov.uk/images/publications/AppendixATheimpactoftheLicensingAct2003onlevelsofcrimeanddisorder.pdf>
- **Scrutiny Councils Initiative** summarising the views of ten local authorities on the implementation of the 2003 Act
<http://www.culture.gov.uk/images/publications/AppendixBScrutinyCouncilInitiativeProgressReport2007.pdf>
- **Review of Secretary of State’s Statutory Guidance** to licensing authorities
- **DCMS Simplification Plan**, including better regulation proposals to improve the licensing regime and an assessment of the administration costs to licence holders and applicants.

- **Independent Fees Panel Report** on the licensing fees structure and licence fee levels.
- **Live Music Forum Report** including the impact of the 2003 Act on live music.
- **Live Music Research** into the level of live music before and after the 2003 Act and the experience of small venues.
- **National Statistics licensing data bulletin** which collected data on the number of licences issued, the number of licence reviews and the information relation to 2006/07.
- **Work undertaken by CGA Strategy Ltd** showing changes in actual on-licensed closing times
<http://www.culture.gov.uk/images/publications/EvaluationappendixC.pdf>)

3.0 Summary of findings

3.1 In the report, the DCMS summarise their findings:

“This first review of the Licensing Act reveals a mixed picture.

Its introduction has not led to the widespread problems some feared. Overall, crime and alcohol consumption are down. But alcohol-related violence has increased in the early hours of the morning and some communities have seen a rise in disorder.

Our main conclusion is that people are using the freedoms but people are not sufficiently using the considerable powers granted by the Act to tackle problems, and that there is a need to rebalance action towards enforcement and crack down on irresponsible behaviour”.

3.2 The report summary goes onto say:

There is clear evidence from a number of evaluation projects and official statistics that the negative forecasts about the impact of the new legislation have not materialised:

- *There is no evidence of 24 hour drinking, with only a minority of premises securing 24 hour licences and very few actually utilising those hours. There have been only limited changes to actual opening hours.*
- *The overall volume of incidents of crime and disorder has remained stable and not risen.*
- *There is no evidence of increases in overall alcohol consumption.*
- *There has been no serious adverse impact on the provision of live music.*

A number of positive trends have emerged from the introduction of the new regime:

- *Transfer of alcohol licensing to local authorities is viewed as a success.*
- *The alcohol licensing system is more democratically accountable and residents are better able to influence licensing decisions.*
- *There is much better partnership working between local authorities, the police and other responsible authorities and licensees.*
- *The new powers, including the ability to review licences, have been welcomed by local authorities and the police, and are being used to good effect.*
- *The administrative arrangements for the new regime appear to have delivered the administration cost savings to businesses, third sector and other licence holders of around £99m a year.*

There are, however, some aspects that require further attention:

- *While some areas report improvements in dispersal from licensed premises because flexible opening hours have helped to smooth the peaks of trouble, there is no clear picture of consistent improvements in all areas.*
- *While there has been a small fall in serious violent crimes, the impact on overall crime levels appears to be limited, with evidence of some displacement into the small hours.*
- *The use of the new legislation, in conjunction with other interventions and as part of a coherent strategy, may vary between different authorities and areas.*
- *There has yet to be a discernible change in the diversity of evening and late night venues, although there is some evidence of good practice and success in certain areas.*
- *While benefits in terms of bureaucracy and red tape have been delivered, some stakeholders are experiencing difficulties, which suggest that the regime could be more proportionate in its application.*
- *While the impact on live music has been broadly neutral, reform has not led to the increases in events hoped for by Ministers, and the regime may be disproportionate for some types of live music events and other types of events.*

4.0 Conclusions

4.1 In the report, the DCMS conclude:

“The Licensing Act could be used more effectively in some areas, in conjunction with other interventions, as part of a coherent and effective local strategy”.

4.2 The DCMS recognise that a strength of the new system is the ability of enforcement agencies to resolve issues without the need to go to a formal review. While this is an efficient and effective way to deal with many licensed premises, the number of licence reviews seems disproportionately low compared with, for example, the number of test purchase failures. There may be more scope to encourage further use of the review powers.

4.3 As a result of the evaluation by DCMS and other evidence, the Government has agreed a number of immediate actions:

- To make it easier to review premises where local intelligence suggests there is a problem;
- To encourage the imposition of tougher sanctions on those found to be breaching their licensing conditions;
- To change the offence of “persistently selling alcohol to a person under 18” from ‘three strikes’ to ‘two strikes’ in three months;
- To support the police and local authorities to identify problem hotspots by ranking geographical areas and concentrations of premises on the basis of the risks they present to crime and disorder, public nuisance and children; and
- To introduce a new “yellow card and red card” alert system. A yellow card will put the problem premises on immediate probation together with tough and uncompromising sanctions and a red card will lead to withdrawal of the licence.

4.4 In addition, the Home Office will bring forward legislation to:

- Increase the maximum fine for anyone not obeying an instruction to stop drinking, or to give up their drink in a designated public place from £500 to £2,500;
- Make it easier for the police to disperse anti-social drinkers;
- Extend the use of Acceptable Behaviour Contracts for young people caught drinking in public; and
- Extending the alcohol arrest referral pilots so that under 18s may also benefit from a brief intervention from a trained worker.

4.5 The DCMS conclude:

The report published today should not be the end of the monitoring and evaluation of the impact of the 2003 Act. The report published today is not the end of the story. We shall use it better to focus our scrutiny. For example, we shall we will undertake further comprehensive research into post-midnight drinking patterns and their impact on crime and order; and we shall carefully measure progress on tackling sales to minors and the protection of children from harm. Measures to toughen

enforcement of the Act are only part of the Government's comprehensive strategy for combating the problems associated with alcohol. Licensing law will therefore remain an important part of the Government's National Alcohol Strategy which addresses, among other things, the need for cultural change, improved social responsibility among retailers and the need for earlier interventions with problem and harmful drinkers.

5.0 Facts and figures

5.1 According to the DCMS Statistical Bulletin, as at 31 March 2007, there were 162,100 premises licences and 15,200 club premises certificates in force. In the year from 1 April 2006 – 31 March 2007, over 100,000 Temporary Event Notices were given. There were over a quarter of a million personal licence holders.

- 123,700 licences and certificates in force were authorised to sell alcohol:
 - o 32,900 premises licences were authorised for off-sale of alcohol only.
 - o 28,100 licences authorised on-sale of alcohol only, of which 4,900 were club premises certificates (eg political clubs, workingmen's clubs, British Legion etc)
 - o 62,700 allowed both on and off sales, of which 7,300 were club premises certificates.
- Just over 50,000 premises were licensed for late night refreshment.
- 72,600 premises licences and 9,100 club premises certificates were authorised for any form of entertainment. Over 260,000 regulated entertainment activities were authorised; the most common types of which were playing of recorded music and the staging of live music.
- 5,100 premises have 24 hour licences.
 - o 3,320 of which are hotel bars which have always been able to serve their guests alcohol for 24 hours.
 - o 920 are supermarkets and stores. We do not have any data on actual opening times of such premises, although one of the trade bodies representing the off-trade has suggested that one of its largest members reports that 15% of their stores with 24 hour alcohol licences do not actually open their stores for 24 hours. Others choose not to open their alcohol aisles for 24 hours, often following discussions with the police about local issues.
 - o 470 pubs, bars and nightclubs have 24 hour licences, but there is no evidence that more than a handful operate on that basis.
- Over 6,600 applications went to a committee hearing in 2006/07.

6.0 Reviews

6.1 Under the old liquor licensing regime, licences were renewed every three years. There was limited scope to intervene in the years in between. At renewal, it was possible for the licensing magistrates to revoke the licence. This was the only option open to them – it was not possible to add conditions to a licence (although non-legally enforceable undertakings could be added).

6.2 The 2003 Act brought in a new system under which a responsible authority or an interested party could seek a review at any time a problem occurred. This could then lead to a hearing and, if necessary, the Licensing Authority could take a number of actions. The statistical bulletin suggests that in first full year of monitoring under the Act (April 2006 – March 2007) there were:

- Around 680 reviews
- 91 licences or certificates were suspended
- 92 licences or certificates were revoked or withdrawn
- 110 cases, the operating hours for the licence was modified following the review
- 400 reviews resulted in other conditions were added or modified.

This is based on a 85% response rate from licensing authorities – the number of actual reviews and outcomes is therefore higher.

6.3 At the last three year renewal under the old regime in 2004, 354 alcohol licences were revoked, although it is important to note that many of those revocations were simply businesses which had stopped trading. These related only to alcohol licences while the figures under the new regime may also relate to licences for public entertainment and late night refreshment. It is therefore not possible to make direct comparisons between the old and new regimes. However, the data does suggest that review powers are being used and provide a more immediate response to problems in licensed premises and a variety of outcomes. There is also evidence that the review power is acting as a useful deterrent.

6.4 While the review process appears more responsive than the old liquor licensing regime, only a small proportion of the 200,000 licences and certificates in force have been reviewed. This may point to the success of the legislation and the ability of enforcement agencies to rectify problems through discussion and agreement and the preventative nature of the licensing regime.

7.0 Licensing Objectives

7.1 **The prevention of crime and disorder:** Prior to the Licensing Act 2003 coming into force, the Home Office put into place a multi-strand evaluation, focussing largely on the Act's impact on crime and disorder. The main findings are set out in 'The impact of the Licensing Act 2003 on levels of crime and disorder: an evaluation' (appendix A). In relation to crime and disorder these are:

- There are no clear signs yet that the abolition of a standard closing time has significantly reduced problems of crime and disorder and, overall, the volume of incidents of crime and disorder appears unchanged.
- There are signs that crimes involving serious violence may have reduced. but there is also evidence of temporal displacement, in that the small proportion of violent crime occurring in the small hours of the morning has grown.
- Alcohol-related demands on Accident and Emergency (A&E) services appear to have been stable in aggregate, though some individual hospitals have seen increased demand, others a fall.
- Police, local authorities and licensees generally welcomed the changes, the new powers it gave them, and the Act's partnership philosophy. They did not report significant problems with implementation – once teething problems were solved – and did not think generally that alcohol-related problems of crime and disorder had worsened .
- In surveys, local residents were less likely to say that drunk and rowdy behaviour was a problem after the change than before it, and majorities thought that alcohol-related crime was stable or declining.
- The main conclusion to be drawn from the evaluation is that licensing regimes may be one factor in effecting change to the country's drinking culture – and its impact on crime – but they do not appear to be the critical factor. The key issue is how they interact with other factors.

7.2 The last point is supported by work by the University of Westminster which looked at the views of national operators and representatives from the police and licensed industry. They found that many operators thought longer hours had allowed customers to leave when they were ready and reduced the rush for late-night transport, others disputed this and felt drinking hours had merely shifted to one or two hours later. The authors thought that the variation in opinion may have reflected local circumstances and that the impact of 'staggered' hours was complex and depended on other measures which had been put in place, as well as issues such as transport and traffic management.

7.3 The main findings from the Home Office's national evaluation are also supported by findings from two smaller scale assessments which were conducted by Home Office researchers in the East of England and Yorkshire and Humber regions. The majority of respondents to the Home Office survey in five case study areas who had visited the city or town centre in the last 12 months and been into pubs, bars and clubs agreed that rapid drinking close to last orders had decreased since the introduction of the Licensing Act. The Home Office evaluation also indicated that, while the impact on crime and disorder has so far been broadly neutral, 13 out of 27 police licensing officers felt that the Act had improved crime and disorder, a similar number felt it had been mixed or made no difference, and only one felt it had got worse. This is consistent with the findings of the recent National Audit Office report on the effectiveness of violent crime reduction at local level found that 46 per cent of Crime and Disorder Reductions Partnerships found the Licensing Act either effective

or very effective in reducing violent crime, whereas 41 per cent reported that it was neither effective nor ineffective, and 13 per cent considered it to be either ineffective or very ineffective.

7.4 The protection of children from harm: Most activity around licensing in relation to the protection of children from harm relates to preventing the illegal sale of alcohol to under 18s; regulating the access to licensed premises by children; and preventing the consumption of alcohol by children on licensed premises. The 2003 Act substantially changed the access to alcohol by children under 18 previously permitted under the Licensing Act 1964. Since 24 November 2005, it has been for the first time illegal for the following to sell or supply alcohol to under 18 year olds:

- over 16,000 members' clubs;
- some 700 boats operating on rivers and along the coast;
- trains.

In addition, since 24 November 2005, it has also been illegal for the following to permit consumption of alcohol by children as young as five years old on their premises:

- around 24,000 restaurants; and
- more than 50,000 public houses in areas away from the "bar" area, such as pub gardens and family rooms.

7.5 Since the 2003 Act came into force, it has also been possible for the first time for licences to contain conditions to restrict or exclude the presence of children from licensed premises where it is considered necessary to protect them from harm. The presence of children as young as 14 in bar areas or in nightclubs at 2am can now be effectively guarded against.

7.6 The various enforcement campaigns undertaken by police and trading standards officers since 2005 have utilised new powers and offences in the Act, particularly through test purchasing campaigns and the review of licences of premises found selling to children. Home Office data indicates improvements in test purchase failure rates. The results of the most recent campaign show that the test purchase rate had fallen to 14.7 per cent – an improvement from the overall 20 per cent failure rate in the pilot campaign in autumn 2006. It should be noted that these figures are not directly comparable as they relate to different campaigns in different areas. In particular, the last campaign was specifically aimed at utilising the new powers against those found persistently selling to children and therefore the tests cover a number of repeat visits.

7.7 The Government set out new ambitions on young people and alcohol in Safe Sensible Social, which was published last year. In particular to:

- delay the onset of regular drinking, primarily by changing the attitudes of 11-15 year-olds and their parents about alcohol;
- reduce harm to young people who have already started drinking; and

- create a culture in which young people feel that they can have fun without needing to drink.

7.8 It is intended to build on this through the Youth Alcohol Action Plan (YAAP), which will be published later this year. The YAAP will look specifically at what more might be done to reduce young people's drinking, by:

- exploring how we can place alcohol further from the reach of young people by tackling low price sales of alcohol;
- exploring what more we could do to deter young people from attempting to buy alcohol and, if they do, how we can intensify confiscation efforts;
- in the context of the existing review of alcohol price, promotion and harm, considering the case for further action to protect children and young people from alcohol advertising;
- exploring how we might prevent young people drinking alcohol in public places where they are unsupervised, as we know that the risk of harm increases in these circumstances;
- working with our partners to strengthen our evidence base on young people and alcohol.

7.9 Other protection of children from harm issues in relation to licensing include restriction on the presence of children during adult entertainment or gambling on a premises, or the need for additional attendants for safety reasons at a theatre or cinema where the audience has a large proportion of children. The 2003 Act also requires cinemas to apply an appropriate film classification system. Protection issues are also covered by other legislation and restrictions, such as that relating to performances by children in plays and in films, or the employment of school age children working in the hospitality industry. Licensing under the 2003 Act should not duplicate other legislation, but the Secretary of State's guidance gives examples of where licensing arrangements might complement other regulations.

7.10 **The prevention of public nuisance:** Research conducted for DCMS by Ipsos-MORI into the experience of smaller establishments in applying for live music authorisation (December 2006) found that 68% of representations relating to live music applications related to noise levels of live music while 33% mentioned noise from customers. The Live Music Forum questioned whether live music really is a source of noise problems and considered that conditions imposed to promote the prevention of public nuisance objective were at times disproportionate and unnecessary, particularly in the light of the existence of other legislation to tackle noise nuisance.

7.11 Concern has been expressed to the DCMS, by local authorities and residents' groups, about the possible impact on public nuisance from customers gathering outside of premises because of smoke free legislation, although no firm evidence has yet been produced. In responding to issues raised during consultation, the recent revision of the statutory guidance to licensing authorities clarified how licensing can be used in relation to areas directly outside a licensed premises.

7.12 The Home Office study on the impact of the new legislation on levels of crime and disorder suggested that, in surveys, local residents were less likely to say that drunk and rowdy behaviour was a problem after the change than before it, and a majority thought that alcohol-related crime was stable or declining.

7.13 **Public Safety:** An important change occurred with the introduction of the Regulatory Reform (Fire Safety) Order 2005 which came into effect in October 2006. This stated firmly that requirements which could be required under the Order should not be replicated in licence conditions. There was initially some confusion about what this meant for licence applications, particularly as fire authority concerns had often been a significant driver of the public safety considerations in relation to licence applications.

7.14 DCMS and CLG considered this point in the review of statutory guidance and have sought to clarify the matter. Nevertheless, queries still arise and the Live Music Forum was particularly concerned that there was still duplication between the regimes. DCMS is committed to keeping this issue under review, not only to ensure that unnecessary requirements are not imposed on licensees, but also to ensure that there is clarity about these important responsibilities.

8.0 Other Aims

8.1 **Public Health:** Public Health is not a licensing objective under the 2003 Act. However, it is a priority for Government to tackle alcohol related public health harms and it is addressing these issues through action under the Alcohol Harm Reduction Strategy, which was developed in parallel with licensing reform policies and was published in March 2004. The Strategy has since been further developed and a renewed strategy, *Safe. Sensible. Social. – the next steps in the National Alcohol Strategy* which was published on 5 June 2007.

8.2 This is a comprehensive strategy to tackle the harms from excessive alcohol consumption. Its aims are:

- to focus future action on reducing the types of harm that are of most concern to the public
- to reduce both crime and ill health caused by alcohol
- to increase the public's awareness of the risks associated with excessive consumption and how to get help

and, overall, to:

- increase the number of people drinking within the Government's sensible drinking guidelines
- reduce the number of men who are drinking more than 50 units a week and the number of women who are drinking more than 35 units i.e. more than twice the sensible daily drinking guidelines - on a regular basis

- reduce the number of under-18s who drink and the amount of alcohol they consume
- ensure the laws and licensing powers we have introduced to tackle alcohol - fuelled crime and disorder, to protect young people and bear down on irresponsibly managed premises, are being used effectively
- shape an environment which actively encourages sensible drinking. This will be delivered:
 - o through partnership working;
 - o by ensuring existing laws and powers are being used effectively, and
 - o by reviewing the effectiveness of existing powers in areas such as promotion and pricing

8.3 The Government undertook in *Safe. Sensible. Social.* to commission an independent review of the relationship between alcohol price, promotion and harm. The review will cover advertising, price discounting and its promotion, and links between these and harms to young drinkers and other groups. It will take account of the study recently published by Ofcom and the Advertising Standards Authority on the impact of the stricter controls on alcohol advertising introduced in 2005. The independent review is expected to report findings in August 2008.

8.4 **The necessary protection of local residents:** A key aim of licensing legislation was to improve local accountability for licensing decisions and make the licensing system more accessible to local residents. This was a key reason for transferring alcohol licensing from the courts to local government.

8.5 The Scrutiny Councils' report found that an early benefit of the regime was better engagement of residents in the licensing process:

'Residents are much more aware of what they can do to resolve problems at a premises and licensees are much more aware of their responsibilities'.

The recent update of the Scrutiny Council's report suggests that this trend is continuing.

8.6 A report by the Central Cities Institute of the University of Westminster found that, 'while the impacts of the Licensing Act 2003 on diversity of venues and dispersal has been limited, it has provided benefits in terms of local accountability'. The researchers also suggested that: 'the changes in licensing had had a generally positive effect on community relations in the areas examined, with residents and local councillors alike feeling that they had more of a say in the process of granting and challenging licensing decisions.'

8.7 The Home Office report on the impact of the Act on levels of crime and disorder found that in three of the five case study areas there was a statistically significant fall since the introduction of the new regime in the proportion of residents who felt drunk and rowdy behaviour was a fairly or very big problem.

8.8 Culture: further development of live music, dancing and theatre: The Live Music Forum was set up by the Government in January 2004 and tasked to ensure as many venues as possible took advantage of the opportunities presented by the 2003 Licensing Act, to monitor the Act's impact on live music, to promote live music generally, and make recommendations to Government on how it might further bolster live music provision. The Forum's findings and recommendations were published on 4 July 2007. The Forum found that:

- Some of the predicted benefits of Licensing reform, such as abolishing the need for annual renewal and consistency over fee levels, have been delivered .
- There was no evidence of a serious detrimental effect on overall live music provision, as some had predicted, but neither has the legislation led to the increase in live music provision Ministers had hoped.
- The majority of local authorities had been fair and reasonable in their licensing decisions and most of the scare stories investigated by the Forum had proved unfounded.
- However, a minority of authorities had been acting unreasonably and against the spirit of the legislation and the Secretary of State's guidance.
- The Forum believed licensing was not appropriate, proportionate or necessary for non-amplified performances of live music or those with audiences under 100 people.

8.9 Ministers responded on 17 December 2007. The work of the Forum was supported by research into the provision of live music in 'secondary' venues (i.e. those that do not put on live music as their core activity, such as pubs, restaurants and nightclubs) before and after the Act came into force and the experience of small venues in dealing with the legislation. The research into the provision of live music suggested that such provision had declined by 5%. However, the report stated that the Act was not a main reason for the decline, but that decisions on staging live music were driven primarily by commercial considerations, such as customer demand, cost-efficiency and fit with the nature of the business, as well as by practical considerations, in particular the suitability of the venue for staging live music. These reasons had not changed since before the 2003 Act came into force.

9.0 Full Report

9.1 A full copy of the DCMS report and appendices can be accessed via the following links:

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

<http://www.culture.gov.uk/images/publications/AppendixATheimpactoftheLicensingAct2003onlevelsofcrimeanddisorder.pdf>

<http://www.culture.gov.uk/images/publications/AppendixBScrutinyCouncilInitiativeProgressReport2007.pdf>

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