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MEETING	GAMBLING & LICENSING ACTS COMMITTEE
DATE	3 SEPTEMBER 2010
PRESENT	COUNCILLORS MERRETT (CHAIR), ALEXANDER, AYRE, HORTON, HYMAN, LOOKER, MOORE, ORRELL, B WATSON AND WISEMAN (VICE-CHAIR)
APOLOGIES	COUNCILLORS REID, RUNCIMAN AND TAYLOR

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## **6. DECLARATIONS OF INTEREST**

Members were invited to declare at this point in the meeting any personal or prejudicial interests they might have in the business on the agenda.

No interests were declared at this stage, but Cllr Looker declared a personal interest during the debate on agenda item 4 (Licensing Act 2003 Update), when Temporary Event Notices (TENs) came under discussion, having at one time applied for a TEN.

## **7. MINUTES**

RESOLVED: That the minutes of the Gambling & Licensing Acts Committee held on 18 June 2010 be approved and signed by the Chair as a correct record.

## **8. PUBLIC PARTICIPATION**

It was reported that there had been no registrations to speak at the meeting under the Council's Public Participation Scheme.

## **9. LICENSING ACT 2003 - UPDATE**

Members considered a report which provided an update on the current local position regarding the impact of the Licensing Act 2003, up to 31 March 2010.

There were currently 866 premise licences and 59 club premise certificates in force within the authority area. During 2009/10, 26 new premise licence grant applications and 42 variation applications had been received, 15 of which had been determined by licensing sub-committee hearings. In addition, 192 new personal licences had been granted and 379 temporary event notices received. The authority area had 21 designated public places orders (alcohol exclusion zones); in 2009/10 a new zone had been introduced in the Clarence Gardens area. A breakdown of premise types and licenses was provided in Annexes 1 and 2 to the report and comments

of Trading Standards, the Environmental Protection Unit and North Yorkshire Police were summarised in paragraphs 9 to 12.

Officers highlighted at the meeting the fact that the national trend for pub and bar closures was not apparent in York, and that the increasing number of new licences being granted for hotels, restaurants and café bars indicated a gradual move towards 'café culture'.

Members thanked Officers for their work on the report and

RESOLVED: That the contents of the report be noted and that Officers be requested to provide an annual update on the Licensing Act 2003, which should include comments on trends in the granting and surrendering of licences.

REASON: To keep Members informed of the effects of their Licensing Policy.

Action Required

1. Make arrangements to bring a yearly update on the Licensing Act to the Committee LC

**10. LICENSING ACT 2003 - REBALANCING THE LICENSING ACT.**

Members considered a report which advised them of a recent Home Office consultation paper entitled *Rebalancing the Licensing Act* and sought approval for a proposed response to the consultation.

The Government was proposing measures to re-balance the Licensing Act 2003, to empower individuals, families and local communities to shape and determine local licensing. The consultation paper was attached as Annex 1 to the report. Suggested responses to the 29 consultation questions were provided at Annex 2. Members were invited to approve or amend the consultation response prior to its submission to the Home Office by the deadline of 8 September 2010.

Having discussed the response in detail, Members agreed that:

- The response be preceded by a comment on the undesirability of allowing such a short period of consultation on these important proposals
- Amendments be made to the suggested responses to questions 1, 3, 4, 6, 7, 8, 9, 11, 15, 17, 20b), 22, 23, 24 and 27
- The response include overall comments indicating that the Council generally welcomed the measures proposed and highlighting the importance of tackling the issue of 'pre-loading' and under-priced alcoholic drink sold by supermarkets and encouraging sensible drinking in a regulated environment.

RESOLVED: (i) That authority be delegated to the Chair, Vice-Chair and Officers to make the amendments agreed by Members and to approve the final wording of the response.\*

(ii) That the response, as amended be submitted to the Home Office.

REASON: In order to provide an appropriate response to the consultation, reflecting Members' views on the proposals.

*\*Note: The final response, as approved by the Chair and Vice-Chair, is attached as an annex to these minutes.*

Action Required

Agree final wording of response with Chair and Vice Chair      LC  
and submit to the Home Office

D Merrett, Chair

[The meeting started at 2.00 pm and finished at 3.35 pm].

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**Responses to the consultation document “Rebalancing the Licensing Act” from the City of York Council.**

The short period given to respond to this consultation, especially as it has fallen across the summer holiday period, is not good practice.

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

This would have a positive impact, licensing authorities would have more power and be able to take all 4 licensing objectives into consideration, making sure that more robust and enforceable licensing conditions are placed on licenses. As licensing authorities undertake a lot of enforcement work and deal with complaints, it is justifiable that they should be able to review licenced premise that are not operating in accordance with the licensing objectives. This would give a more consistent pattern when making decisions.

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

Members will be able to refuse or place conditions on licences if they believe the granting of a premise licence will have an impact on the licensing objectives. This may enable members to address more easily the understandable concerns of residents.

**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?**

With respect to the application form experience has shown that applicants do not fully understand the importance of completing Section P (operating schedule), therefore further guidance should be included. This guidance should state that information included in Section P will form part of the premise licence. There should be explicit consideration of dispersion arrangements/policies.

It should be a legal requirement that the blue display notice must clearly stipulate what has been applied for within the application, for example licensing activities applied for, days and times, for variation applications a summary of at least the key changes. It should be a legal requirement that licensing authorities approve the content of blue notices and the location where the notice is displayed.

Legislation should be amended so enable local authorities or the applicant to formally consult with local residents, modelled on those used form planning applications, to provide consistency in approach and ensure nearby residents do pick up when an application has been made.

Display notices should be a more noticeable colour and prominently displayed.

**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?**

City of York Council members always take the polices issues/concerns/evidence into consideration, but Licensing Authorities should have discretion when determining

application to accept, reject or amend police recommendations and take full responsibility for their decisions.

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

The City of York Council currently consults widely on the Statement of Licensing Policy. However we are restricted by the content of the Statutory Guidance and model policies produced by LACORS. Licensing Authorities should have greater discretion to reflect the local situation.

Please consider in conjunction with answer at question 3.

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

Would allow more representations from those on dispersion routes, and non-residents with a general interest in an area who aren't directly affected by the licensed premise (some of which may be frivolous & vexatious), and therefore more licensing hearings would be required. We consider that representations from interested parties on dispersal routes should be taken into consideration.

The question of vicinity does cause conflict when officers and members do not agree that a representor lives within the vicinity.

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

Licensing authorities currently try to liaise with their local PCT's and ambulance service regarding statistics on alcohol related A&E admissions, however they do not allocate resources for the collection of this information.

Health bodies are not currently resourced to deal with licence applications.

Who would be the responsible authorities?

### **Question 8: What are the implications in including the prevention of health harm as a licensing objectives?**

This could allow the licensing authority to control low cost promotions that encourage excessive binge drinking but otherwise there could be difficulties in burden of proof that one premise has cause 'health harm'. Who would enforce? What are the implications on premises that are already licensed?

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

Within the City of York Council we class community groups (including parish councils) as being interested parties (within the definition in Section 13(3) of the Act) if they are within the vicinity of a licensed premise and believe they will be affect by said premise. However this should also include community groups that are located in dispersal routes.

This could lead to increased number of representations and therefore more hearings.

**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?**

Since the introduction of the Licensing Act the City of York Council has only had 5 appeals to magistrates.

Appellant could perceive that the licensing authority will make the same decision, by appealing to magistrates a different body hears and determines the applications. There is also the issue of licensing authorities determining applications submitted by their own authority.

**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?**

This would give licensing authorities more power. It will be clear to all parties (especially interested parties) which licence and conditions are currently in force, unless the licensing authority has agreed a different timescale to allow a practical/reasonable implementation period.

Legislation should be in place to protect licensing authorities from any claims for loss of business resulting from conditions imposed at the original hearing being subsequently removed or reduced in effect at any subsequent appeal.

**Question 12: What is the likely impact of extending the flexibility of Early Morning Restriction Orders to reflect the needs of the local area?**

This provides additional powers to licensing authorities if issues arise. It also needs to be extended to cover late night refreshment house as they cause issues within residential areas. However consideration should be given to previous issues of the 1964 Act of premises closing at the same time and the impact of dispersal of people and policing aspects.

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

No, subject to the alternative proposals being introduced.

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

Within City of York Council we have had no problems with providing evidence to support a CIZ, however it has proved difficult to establish a logical boundaries, for example streets are included within the zone that do not have any licensed premise.

The provision to include a CIZ within the statement of licensing policy is only provided in statutory guidance not within the Act, if it was included in legislation its use would be strengthened.

**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?**

Any levy should be set by the licensing authority as they will have local knowledge of the costs incurred and costs will vary from area to area. The levy must be justified and not exceed the true costs over time.. Guidance will be required on mechanisms to assess policing costs.

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

This would be difficult for licensing authorities to administer/enforce.

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

Late night activities do have an impact on the city and funding is required to provide services such as taxi marshals, keeping toilets open, street cleaning. Licensing authorities should decide how the levy is spent within their area as they will be aware of the issues, this should be done in consultation with licensed premises, other agencies and interested parties in the area.

It will also be for licensing authorities to monitor that these services are provided.

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

A greater flexibility and discretion for meeting local needs will be better. Now that premises operate later into the evening / early hours there has been increases in noise nuisance.

**Question 19: What would be the consequences of amending the legislation relating to TENs to that:**

**a) All the responsible authorities can object to a TEN on all of the licensing objectives?**

This could prevent impact on the local community. However, could create more objections and therefore more hearings will take place. The City of York Council currently circulates a copy of the TENs register to a number of responsible authorities for information purposes. Within York we deal with approximately 370 per year.

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

This would give the police more time to consider TEN's. However, this would only work if the timescale for dealing with applications is also increased for licensing authorities.

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



Increasing the notification period would assist licensing authorities, especially if the objection timeframe is increased.

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

This would be helpful, and will make sure the licensing objectives are upheld.

**Question 20: What would be the consequences of:**

**a) Reducing the number of TENs that can be applied for by a personal licence holder to 12 per year?**

This could negatively impact on councils entertainment/leisure programs. Additionally this is impossible to track except nationally.

**b) Restricting the number of TENs that could be applied for in the same vicinity (eg a field)?**

None. As applicants do not have to submit a plan(s) as part of the notice Licensing Authorities are currently unable to correctly monitor this currently for outside areas. Legislation should be changed to make it a requirement that plans are submitted as part of the notice.

**Question 21: Do you think 168 hours (7days) is a suitable minimum for the period of voluntary closure that can be flexibly applied by police for persistent underage selling?**

Yes, as time will be needed to implement any requirements requested by the police.

**Question 22: What do you think would be an appropriate upper limit for the period of voluntary closure that can be flexibly applied by the police for persistent underage selling?**

6 weeks, this will give the police time to submit a review application and for the review to be determined. Anything longer than this time could affect the traders business.

**Question 23: What do you think the impact will be of making licence reviews automatic for those found to be persistently selling alcohol to children?**

It will give licensing authorities more powers to deal with poor operators. It will also give clarity to licence holders that their licence will be reviewed.

This does not address the issue of proxy sales which are becoming an issue, or the sale of alcohol by way of delivery, especially cross boundary and internet order deliveries.

**Question 24: For the purpose of this consultation we are interested in expert view on the following.**

Issues relating to cost are not a matter that licensing authorities have any experience in and therefore we cannot comment.

The City of York Council does have issues with pre loading due to the availability of cheap alcohol in supermarkets, and we strongly request that this issue is addressed.

Any legislation needs to clearly address the issues around outlet pricing being set nationally as against locally.

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

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

**c. The feasibility of using the Mandatory Code of Practice to set a licence condition that no sale can be below cost, without defining cost.**

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

Based on figures for 2009/10 the City of York Council total income from the Licensing Act was £219349, the total expenditure including responsible authorities was £255556, a difference of £36207. Fees should be based on full cost recovery.

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

Yes, this has been an issue for this authority with licence holders not paying or selling premises and not making sure that licences are transferred. If the fee is not paid within a month of been due the licence should be revoked.

**Question 27: Have the first set of mandatory conditions that come into force in April 2010 had a positive impact on preventing alcohol related crime?**

Yes and no. We have received a number of phone calls from operators checking if their drinks promotions are ok, and asking who is a customer with regards to providing drinking water.

However, the condition do not address the issues of drinks promotions from off licensed premises.

Drinks promotions could be address by making "prevention of heath harm" a licensing objective.

**Question 28: Would you support the repeal of any or all of the mandatory conditions (conditions (a) – (e) above)?**

Condition (a) no, but the condition should be reworded to make it easier for operators to understand and therefore adhere to.

Condition (b) is not required as it can be address by rewording condition (a) accordingly

Condition (c) no, but it has caused the most confusion, operators have no issues with giving free drinking water to customers, however the condition does not define a customer (can someone just go into a pub and expect to be served free drinking water all night, or

does a customer have to buy a drink or have one bought from them and then request a free drinking water). However a designated driver should not be penalised.

**Question 29: Would you support measures to de-regulate the Licensing Act, and what sections of the Act in your view could be removed or simplified?**

Yes, subject to this response to the consultation and particularly regarding addressing cheap supermarket alcohol and the pre-loading problem.

The application forms should be simplified making it easier for applicants to complete and easier for responsible authorities and interested parties to read and understand.

The legislation relating to club premise certificates should be simplified or removed, making clubs apply for premise licences. There are currently issues with clubs operating outside the legal requirements of the legislation regards membership.

The system should be simplified for small and community premises that only provide regulated entertainment.

Licensing Policies should not have to be fully reviewed every 3 years, just as and when the licensing authority requires.

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