



Response to ‘Rebalancing the Licensing Act’ Consultation¹ by Josie Appleton, director of the Manifesto Club (www.manifestoclub.com).

As a civil liberties group campaigning against the hyper-regulation of everyday life, we have grave concerns about the government’s proposed licensing reforms. Far from increasing the power of ‘communities’ – as claimed - these proposed changes would increase the power of local councillors and the police, who will be removed from necessary checks and balances.

In our view, local authorities’ Licensing Committees already have far too many powers. They already have significant powers to impose conditions on licensed premises, with cases reported to us of pubs asked to install CCTV cameras or CRB check their staff, put up ‘responsible drinking’ notices, search customers, or to install a ‘Think 30’ ID check policy. There is also currently a significant over-regulation of entertainment, with Licensing Committees responsible for issuing licenses for everything from live music to the possession of a piano, not only in licensed premises but in village halls and old people’s homes.

If this government is committed to civil liberties, as it claims, then the powers of Licensing Committees should be reduced, not massively increased as this consultation document proposes. When there are genuine legal or public order problems associated with licensed premises, there are more than enough powers to deal with these. The government’s proposed changes would give the police and local councillors excessive power to determine licensing decisions, eclipsing other civic interests not to mention important civil libertarian principles.

We campaigned against the previous government’s hyper-regulation of alcohol, with our Campaign Against the Booze Bans². We will continue our campaign to take up these measures proposed by this government.

Below we state our specific concerns with the government’s proposed changes to licensing policy.

We oppose the proposal of allowing licensing authorities to bring cases for licence removal before themselves (Consultation Question 1); reducing the burden of proof required for a licensing authority to remove a pub or bar’s licence (Qu 2); the proposal that licensing authorities hear their own appeals,

¹ <http://www.homeoffice.gov.uk/publications/consultations/cons-2010-licensing-act/alcohol-consultation?view=Binary>

² <http://www.manifestoclub.com/boozebancampaign> - We have campaigned against over-cautious ID checking in bars, alcohol confiscation in public spaces, and the banning of happy hours.

rather than the appeal being heard in a magistrate's court as at present (Qu 10); making licensing authorities' decisions enacted as soon as they are made, rather than pending an appeal (Qu 11).

These proposals go against the basic elements of criminal justice: that a person is innocent until proven guilty; that a state authority must have a very good reason before stopping them from doing things; that an appeal is heard by a different authority from the authority that made the decision. These proposals essentially give licensing authorities unchecked powers to close down or impose their conditions on licensed premises, without being subject to due process.

We also oppose requiring licensing authorities to accept all representations from the police (Qu4).

The police have a very particular set of interests, which do not marry with all civic interest groups. The police, if given the choice, would doubtless not have any bars or nightlife at all, since this would mean less crime and rowdiness and a quieter job for them. In Barking and Dagenham, two police officers put in 22 applications for licence review in the course of a single year, a list that included many local supermarkets.³ Should their opinion always prevail? The police's views on the matter must always be tested and weighed in courts or other independent bodies, not only for their truth but also for their reasonableness when countered against other social interests, such as members of the public who want to be able to buy beer at their local supermarket.

We are concerned about allowing health authorities to bring licence review cases, and designating health harm as a licensing objective (Qu 7, 8)

Local health authorities would no doubt be too busy to get involved in licensing proceedings. But there is an element of the medical establishment which, like the police, has a particular set of interests that are not necessarily those of the general public. Statements from NICE and other health bodies show a growing penchant for interfering in people's liberties for the sake of their health – for example, NICE's recent call for a minimum alcohol price and a complete ban on alcohol advertising. From the pure perspective of health, it would be better not to drink at all and to be in bed early every night. However, we do not organise our lives solely around our physical wellbeing, which is why it is better that doctors do not get too involved in politics. Giving health authorities more political powers would encourage this authoritarian strand of the medical establishment.

We are concerned about greater penalties to close, fine and review the licenses of premises found to be serving under-age customers (Qu 21/22/23).

The obsession with preventing all under-age drinking is an impossible and counter-productive errand. As we have show in our report, *28 ¾: How Constant Age*

³ <http://www.lbbd.gov.uk/6-living/hcs/licensing/public-register/premises/premises-licence-review.html>

Checks are Infantilising Adults⁴, the main result of ‘Think 25’ policies is to force people in their late 20s and 30s to carry their passports to the supermarket. Any tightening of penalties will encourage the constant ID checking of young adults. Furthermore, there has been a long-standing practice in Britain of landlords turning a blind eye to 16 or 17 year old drinkers so long as they behaved themselves. This arrangement meant that young people tended to be socialised into responsible and adult drinking. A further crackdown on under-age drinking will not stop under-18s getting hold of alcohol: it will just mean that they drink in a more childish and unchecked manner, away from adults and adult institutions. By any account, a local pub is a far better place for a 16 or 17 year old to encounter alcohol than the corner of a local car park.

We oppose setting a minimum price on alcohol or banning ‘below cost’ selling (Qu 24)

It is not the government’s business to set a price for alcohol, or for any other product. For a start, ‘below cost’ would be almost impossible to define, since different licensed premises have different ‘costs’. We also object to the implication that excessive drinking is solely the result of cheap alcohol, and that the only answer is to pinch people’s pockets. In practice, the reasons why people drink to excess owe far more to social and existential factors than purely to price.

We oppose increasing the regulation of ‘temporary events’ (TENs), with the proposal that holders of temporary events must give longer periods of notice; that the police have more time in which to respond (Qu 19); and that the number of applications that can be made by one person or in one area are limited (Qy 20).

It is our view that there is already too much bureaucracy covering applications for ‘temporary events’ – a category which includes carnivals, village fetes, public concerts, beer festivals, etc. Temporary events are essential and spontaneous parts of community life; it should not be onerous for members of the public to organise these events, even if they lack expertise in licensing regulation or other forms of local council bureaucracy. The proposal to increase the regulation of temporary events, requiring more procedures, greater notice, and more potential for objection from authorities would greatly increase the administrative burden and make it harder for local events to go ahead.

The government asks for views on the Mandatory conditions for the licensing act (Qu 28/29). We support the repeal of both sets of mandatory conditions.

The Mandatory conditions that entered in April 2010 prohibited ‘irresponsible promotions’, which bans everything from prizes of free alcohol, offers of cheap alcohol around sporting events, or provision of free/cheap alcohol through use of promotional flyers. We oppose this condition as an inappropriate intervention into pub life. Why shouldn’t a pub be allowed to give alcohol as a prize for a pub quiz, or have ‘2 for 1’ offers? The Happy Hour is a traditional part of pub life. Again, it

⁴ <http://www.manifestoclub.com/IDcheckreport>

should not be the business of government to tell pubs and bars how they should promote their product.

The second set of mandatory conditions, which will enter on 1 October 2010, will require each licensed premise to have an Age Verification Policy, and to request photographic and holographic ID from anybody who appears to be under the age specified in the policy (normally 21 or 25). We oppose this on the basis that it will lead to yet more young adults being regularly ID checked (see our report, *28 ¾ - How Constant ID checks Are Infantilising Adults*). This seems counterproductive for a government that has abolished ID cards.

We therefore support the repeal of both sets of mandatory conditions.

APPENDIX: CONSULTATION 'REBALANCING THE LICENSING ACT'

<http://www.homeoffice.gov.uk/publications/consultations/cons-2010-licensing-act/alcohol-consultation?view=Binary>

- Consultation Question 1: What do you think the impact would be of making relevant licensing authorities responsible authorities?
- Consultation Question 2: What impact do you think reducing the burden of proof on licensing authorities will have?
- Consultation Question 3: Do you have any suggestions about how the licence application process could be amended to ensure that applicants consider the impact of their licence application on the local area?
- Consultation Question 4: What would the effect be of requiring licensing authorities to accept all representations, notices and recommendations from the police unless there is clear evidence that these are not relevant?
- Consultation Question 5: How can licensing authorities encourage greater community and local resident involvement?
- Consultation Question 6: What would be the effect of removing the requirement for interested parties to show vicinity when making relevant representations?
- Consultation Question 7: Are there any unintended consequences of designating health bodies as a responsible authority?
- Consultation Question 8: What are the implications in including the prevention of health harm as a licensing objective?
- Consultation Question 9: What would be the effect of making community groups interested parties under the Licensing Act, and which groups should be included?
- Consultation Question 10: What would be the effect of making the default position for the magistrates' court to remit the appeal back to the licensing authority to hear?
- Consultation Question 11: What would be the effect of amending the legislation so that the decision of the licensing authority

applies as soon as the premises licence holder receives the determination.

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

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

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

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

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

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

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

- Consultation Question 19: What would be the consequences of amending the legislation relating to TENs so that:
 - a. All the responsible authorities can object to a TEN on all of the licensing objectives?
 - b. The police (and other responsible authorities) have five working days to object to a TEN?
 - c. The notification period for a TEN is increased, and is longer for those venues already holding a premises licence?
 - d. Licensing authorities have the discretion to apply existing licence conditions to a TEN?

Consultation 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?

b. Restricting the number of TENs that could be applied for in the same vicinity (e.g. a field)?

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

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

- Consultation 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?

- Consultation Question 24: For the purpose of this consultation we are interested in expert views on the following.

- 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.

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

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

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

Consultation Question 28: Would you support the repeal of any or all of the mandatory conditions?

- Consultation 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?