

# Public Document Pack

**Date of meeting** Thursday, 10th April, 2014  
**Time** 7.00 pm  
**Venue** Committee Room 1, Civic Offices, Merrial Street,  
Newcastle-under-Lyme, Staffordshire, ST5 2AG  
**Contact** Geoff Durham

## Licensing Committee

### AGENDA

#### PART 1 – OPEN AGENDA

- 1 Apologies
- 2 Declarations of Interest
- 3 **MINUTES OF PREVIOUS MEETING** (Pages 3 - 4)  
To consider the minutes of the meeting of this committee held on 26 September, 2013
- 4 **Minutes of Sub Committee Meetings** (Pages 5 - 14)
- 5 **Alcohol and VAT Briefing Note** (Pages 15 - 38)
- 6 **Deregulation Briefing Note** (Pages 39 - 42)
- 7 **Rewiring Public Services Briefing Note** (Pages 43 - 68)
- 8 **Sex Establishment Policy Consultation 2014** (Pages 69 - 70)
- 9 **CONSULTATION ON LOCALLY SET FEES**  
Report to follow pending consultation with Chair and Vice Chair
- 10 **Urgent Business**

**Members:** Councillors Bailey, Bannister, Mrs Bates, Eastwood, Hambleton (Chair), Mrs Heames, Miss Mancey, Mrs Simpson, Tagg, Welsh, White, Williams and Mrs Winfield (Vice-Chair)

**PLEASE NOTE:** The Council Chamber and Committee Room 1 are fitted with a loop system. In addition, there is a volume button on the base of the microphones. A portable loop system is available for all other rooms upon request.

**Members of the Council:** If you identify any personal training/development requirements from any of the items included in this agenda or through issues raised during the meeting, please bring them to the attention of the Democratic Services Officer at the close of the meeting.

**Meeting Quorums :-** 16+= 5 Members; 10-15=4 Members; 5-9=3 Members; 5 or less = 2 Members.

Officers will be in attendance prior to the meeting for informal discussions on agenda items.

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## LICENSING COMMITTEE

Thursday, 26th September, 2013

**Present:-** Councillor Trevor Hambleton – in the Chair

Councillors Bailey, Eastwood, Mrs Heames, Mrs Simpson, Tagg, White and Mrs Winfield

1. **APOLOGIES**

2. **DECLARATIONS OF INTEREST**

There were no declarations of interest.

3. **SCRAP METAL DEALER ACT 2013 FEE SETTING**

A report was submitted in relation to the Scrap Metal Dealers Act 2013 which had received Royal Assent on 28 February 2013 and was due to take effect from 1<sup>st</sup> October this year.

The Act provided that an application for a licence must be accompanied by a fee set by the Local Authority and the report requested that the Committee set that fee.

The introduction of the Scrap Metal Dealers Act from October 2013 will replace all previous legislation relating to Scrap Metal Dealers and Motor Salvage Operators.

**Resolved:**

1. That a fee of £150 be set for a collectors Licence
2. That a fee of £200 be set for a Site Licence.

**COUNCILLOR TREVOR HAMBLETON**  
Chair

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**LICENSING SUB-COMMITTEE**

Thursday, 26th September, 2013

**Present:-** Councillor Trevor Hambleton in the Chair

Councillors

1. **APPLICATION FOR THE REVIEW OF A PREMISE LICENCE - LONDON ROAD TAVERN. LONDON ROAD, NEWCASTLE**

Having taken into account the Licensing Act 2003, the guidance issued under Section 182 of the Act and the Councils Statement of Licensing Policy and also the fact that Staffordshire Police have requested a review of the premises licence to promote the licensing objectives relating to the Prevention of Crime and Disorder and the Protection of Children from Harm but that Staffordshire Police were prepared to withdraw their representations on the basis that the conditions agreed by themselves and the Licence Holder, which are set out on pages 12 & 13 of the report to the Council were added to the Premises Licence in substitution for the existing condition 2 of annex 3 currently set out under The Protection of Children from Harm.

The Licence Holder having confirmed its agreement to the imposition of the revised conditions, the Committee are disposed to add the agreed conditions to the Premises Licence and a notice will be issued to that effect.

**Resolved:-** That the decision be noted

**TREVOR HAMBLETON**  
Chair

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## LICENSING SUB-COMMITTEE

Tuesday, 3rd December, 2013

**Present:-** Councillor Hambleton in the Chair

Councillors White and Mrs Winfield

1. **APPLICATION FOR A PREMISE LICENCE - ASDA, MORRIS SQUARE, WOLSTANTON**

Having taken into account the Licensing Act 2003, the guidance issued under Section 182 of the Act and the Council's Statement of Licensing Policy and also the fact that representations have been received from local residents and East Newcastle Locality Action Partnership (ENLAP) relating to the Prevention of Public Nuisance

The Committee have considered that licensing objective in the light of what had been said and had listened to the arguments and were persuaded that in the light of the applicants offer to amend their application to provide for the sale of alcohol for an additional hour in the morning, it would not offend the licensing objectives to grant that amended application.

The Committee were however, concerned with the hours originally proposed in view of the evidence given by a resident whose property adjoined the premises that has family who had experienced noise and nuisance from patrons of the premises due to their parking in the vicinity of the residents premises. It was however accepted that the applicant was sympathetic to his and was engaging with local residents on order to reduce any inconvenience.

The Solicitor for the applicant brought to the Committee's attention the decision of the High Court in the Thwaites case that all determinations of Licensing applications should be made on empirical evidence and not on speculative evidence.

The Committee also took into account paragraph 10.13 of the Secretary of States guidance which states that shops should normally be free to provide sales of alcohol for consumption off the premises at any time when the retail outlet is open for shopping unless there were good reasons to restrict the hours on Licensing objectives. In fact, the Council's own Licensing policy at 3.13 mirrored the guidance provided relevant representations were not received. Where they were however, more restrictive hours would be considered.

The Committee established that there would be no additional deliveries during the proposed new hours and it was content that there would be no additional nuisance.

**Resolved:-** That the revised application for the sale of alcohol for an additional hour from 7.00am to 8.00am Monday to Saturday inclusive be granted and a notice would be issued to that effect.

**COUNCILLOR T HAMBLETON  
Chair**



## LICENSING SUB-COMMITTEE

Wednesday, 4th December, 2013

**Present:-** Councillor Hambleton in the Chair

Councillors White and Mrs Winfield

### 2. REVIEW OF PREMISE LICENCE - YATES' , IRONMARKET, NEWCASTLE

Following negotiations with representatives of the Premise Licence Holder it has been agreed that the following conditions be added to the Premise Licence:

To remove conditions on current premise licence under annex 3 1 (a) and (b) and all conditions under annex 3 iv and replace with:

1. The premises must adopt the challenge 25 scheme to tackle underage sales. All staff must be fully trained in its use before being allowed to sell alcohol.
2. Training for staff selling alcohol should be refreshed at least every three months. Both initial and subsequent refresher training in relation to the sale of alcohol will contain a written test to be undertaken by the staff members must be signed and dated by both the members of the staff and the designated premise supervisor.
3. The records of training and all literature relating to the training undertaken (including written tests) must be kept fully updated at all times and held at the licensed premise. The records must be made available immediately to the police officers, police licensing officers or trading officers upon request.
4. Details of all refusals of alcohol sales will be recorded and maintained at the premises via the till system. A report from the till system will be produced and checked on a monthly basis by the designated premises supervisor or duty manager and endorsed accordingly by the DPS or duty manager signing the report with the time and date of inspection.
5. Persons purchasing alcoholic drinks who appear to be under the age of 25 must be required to produce proof of age by way of a proof of age card accredited under the Proof of Age Standards Scheme (PASS) or if a proof of age card is not available a genuine photo driving licence or passport. All bar staff as part of their training will need to be familiar with these type of identity documents.
6. A till prompt must be in place at all times at the point of sale which reminds staff of proof of age requirement and needs to be overridden by the operator once the age has been checked.
7. At the entrance to the premise and at the till area there will be a UV light positioned to allow the door staff and bar staff to check the validity of identity documents. The lights will be operational at all times when the premise is open to the public.

To modify any condition currently placed upon the Premise Licence under Annexe 2 concerning door staff with the following:

8. On Friday and Saturday evenings there will be provided a minimum of two door supervisors at the venue from 20:00 hours until the venue is closed. One door supervisor will be positioned at pavement level outside the venue at the entrance door and this member of door staff must be present in this location until the venue is closed (save when responding to a call for assistance).
9. All door staff should be familiar with the acceptable forms of identification and be familiar with genuine documents and how to identify fake documentation.
10. All door staff to wear high visibility jacket when on duty at the premise and these jackets to have printed upon them appropriate wording to identify that they are security staff at the venue. (black jackets or similar with reflective strips are not considered to be high visibility).
11. A written record shall be kept on the premises by the Designated Premises Supervisor of every person employed on the premises as a door supervisor in a register kept for that purpose. That record shall contain the following details:
  - The door supervisors name, date of birth and home address
  - His/her security authority licence number
  - The time/date he/she starts and finishes duty
  - Each entry shall be signed by the door supervisor

That register shall be kept fully updated at all times and remain at the licensed premise and be available for inspection immediately upon demand by an authorised officer of the Council, the Security Industry Authority or a Police Constable when they are used for a licensable activity.

12. The police shall have the power to review the position regarding door supervisors without affecting the premise licence. In the effect there could be circumstances where the police would agree to the removal of the need for door supervisors and also the need to reinstate the requirement for door supervisors. Any such decision will be given in writing to the premise licence holder.

**Resolved:-** That the information be received and the comments noted.

**COUNCILLOR T HAMBLETON**  
**Chair**

**LICENSING SUB-COMMITTEE**

Tuesday, 3<sup>rd</sup> December, 2013

**Present:-** Councillor Hambleton– in the Chair

Councillors White and Mrs Winfield

1. **REVIEW OF PREMISE LICENCE - THISTLEBERRY HOTEL, THISTLEBERRY AVENUE, NEWCASTLE**

The above premises were subjected to a compliance test operation run by Staffordshire Police which took place on Friday 28<sup>th</sup> June 2013 in relation to the sale of alcohol to juveniles, where an under age girl was sent into the premises to see if she could purchase alcohol.

An alcoholic drink was sold by a member of staff at the premises to a child aged 15 years of age. The member of staff did not ask the volunteer for any form of identification prior to the sale taking place.

Newcastle Borough Council Licensing Department have been informed that the Police and the representatives of the premise licence holder have reached an agreement that a warning should be issued to the designated premise licence holder.

The Licensing Sub-Committee considered the circumstances at its meeting held on Tuesday 3<sup>rd</sup> December 2013 and expressed its disappointment at the fact that the premises failed a test purchase some five months ago (date detailed in first paragraph of this letter). That said, it was noted and acknowledged the premise licence holder agreed with the Police in July 2013, to the addition of 18 conditions to the premises licence. The minor variation to add those conditions to the premise licence was made on 26<sup>th</sup> July 2013. It was expected that with increased vigilance on the part of the premises and staff, and compliance with the agreed additional conditions that the premises would going forward, promote the licensing objectives.

Having said that, if in the future a further illegal sale of alcohol is made to a person under the age of 18 years then the Licensing Authority may consider it appropriate to take further additional steps mentioned in section 52 (4) of The Licensing Act 2003 to ensure the promotion of the licensing objectives.

**Resolved:-** That the information be received and the comments noted.

**COUNCILLOR T HAMBLETON**  
Chair

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## LICENSING SUB-COMMITTEE

Thursday, 23rd January, 2014

**Present:-** Councillor Trevor Hambleton– in the Chair

Councillors

### 2. **APPLICATION FOR A PREMISE LICENCE - MARSTONS NEW BUILD. LIVERPOOL ROAD, NEWCASTLE**

Having taken into account the licensing Act 2003 and the Guidance issued under Section 182 of the Act, the Council's Statement of Licensing Policy and also the fact that representations have been received from Staffordshire Police and other persons on the basis that to grant the application would undermine the objectives relating to Crime and Disorder and the Prevention of Public Nuisance and the fact that the applicant had indicated that they were prepared to agree the conditions proposed by the Police and on that basis the Police had withdrawn their representations.

The Committee had considered those Licensing objectives in light of what had been said and had listened to the arguments and were persuaded that it would not offend the Licensing objectives to grant the application.

The residents expressed concerns about possible noise nuisance in general that may be experienced by properties at the rear of the premises but the Committee had been given assurances that Environmental Health matters were being dealt with by the Council's Planning Committee.

Residents were also concerned about the hours applied for by the applicant and the possibility of noise nuisance occasioned thereby. The solicitor for the applicant referred to the decision of the High Court in the Daniel Thwaites case in 2008 in which it was held that all determinations of licensing applications should be made on empirical evidence and not on speculative evidence.

Residents also referred to other local public houses which closed at earlier times. The Committee were in relation to this, referred to the problem of zoning alluded to in the Thwaites case where it was stressed the Licensing Authorities should not fix pre-determined closing times for particular areas. In fact the Secretary of State's guidance at 10.11 supported this.

The solicitor for the applicant also referred to the guidance at 9.39 which reiterated the fact that the Authority's determinations should be evidence based.

Having taken all of the evidence into account the Committee concluded that a licence should be granted on the terms applied for subject to the following conditions:

The conditions which the Committee were disposed to impose in addition to the relevant mandatory conditions and also conditions that were consistent with those listed by the applicant in the operating schedule were those set out in an email sent to the Applicant on the 20<sup>th</sup> December 2013 at 10.42 by the Police excluding the additional conditions relating to televised sporting events as the Committee had been assured that there would be none shown to the public and a notice would be issued to that effect.

**TREVOR HAMBLETON  
Chair**

**Briefing Note to the *Licensing Committee*  
10<sup>th</sup> April 2014**

**Selling Alcohol at below Duty + VAT**

**Additional Mandatory Condition on Premise  
Licences and Club Premise Certificates**



**Report Author:** *Julia Cleary*  
**Job Title:** *Democratic Services Manager*  
**Email:** *Julia.cleary@newcastle-staffs.gov.uk*  
**Telephone:** *01782 742227*

On 23 March 2012 the Government launched its Alcohol Strategy, the Strategy aims to radically reshape the approach to alcohol and reduce the number of people drinking to excess.

The Alcohol Strategy is targeted at harmful and hazardous consumers and aims to limit the impact on responsible consumers. The Government's response to the Alcohol Strategy consultation, published on 17 July 2013, set out the Government's intention to ban below cost selling to tackle the availability of below cost alcohol.

Subject to parliamentary approval, the ban will come into force on 6 April 2014 as an additional mandatory condition. The Home Office state that 'cost' will be defined as the level of duty plus value added tax ('VAT') payable on the duty element of the product price.

This will mean a 440ml 4% ABV can of beer will no longer be able to be sold below 41p, a 750ml bottle of 12.5% ABV wine must be priced at at least £2.41, and a 70cl bottle of 37.5% ABV spirits at £8.89. For higher strength beers, a 440ml can of 9% ABV lager will have to be priced at a minimum of £1.16 a can and a 500ml can at £1.31.

The guidance attached to this briefing note provides a single point of reference for suppliers of alcohol and local authorities in England and Wales for banning the sale of alcohol below the cost of duty plus VAT.

The guidance document provides comprehensive information regarding implementation of the relevant legislation, methods of calculating the amount of duty plus VAT (referred to in legislation as "the permitted price") and effective enforcement of the ban. The content of the guidance relates to proposals to be introduced as draft legislation in early 2014. Therefore the

content is subject to parliamentary approval of legislation; if approval is obtained, the legislation will come into force in April 2014

The ban will prevent businesses from selling alcohol at heavily discounted prices and aims to reduce excessive alcohol consumption and its associated impact on alcohol related crime and health harms.

The ban is a new licensing condition of the Mandatory Code of Practice. The Mandatory Code of Practice applies to all licensed premises, including those with club premises certificates, in England and Wales.

Responsibility for ensuring compliance with the mandatory condition setting out the permitted price is the responsibility of a “relevant person”. Relevant person is defined (in relation to premises licences) as the premises licence holder, designated premises supervisor or personal licence holder and (in relation to club premises certificates) a member or officer of a club who is present and able to prevent a supply of alcohol.

The premises licence holder, designated premises supervisor or personal licence holder is responsible for ensuring that any person (if different from the licence holder) responsible for amending prices on the premises is aware of the legal requirement to sell alcohol at or above the cost of duty plus VAT on that premises. In circumstances where local store managers are not responsible for amending the prices in-store, responsibility is applicable to the company headquarters and the person, or persons, who are a “relevant person” under the mandatory condition.

A full copy of the Guidance is attached as an appendix to this note.





Home Office

# **Guidance on banning the sale of alcohol below the cost of duty plus VAT**

For suppliers of alcohol and enforcement authorities in England and Wales

February 2014

# Contents

## Introduction

- 1) Overview: banning the sale of alcohol below the cost of duty plus VAT
- 2) Who the ban applies to

## Section 1: Implementing the ban

- 3) Responsibility for ensuring compliance with the mandatory condition at premises
- 4) How to calculate the permitted price of duty plus VAT
- 5) Changes to excise duty and VAT
- 6) Updating of pricing systems
- 7) Multibuy promotions
- 8) Multibuy promotions on non-alcoholic products
- 9) Multipack products
- 10) Inclusive drinks
- 11) Complementary drinks
- 12) Discount coupons
- 13) Reward cards
- 14) Staff discount
- 15) Online internet sales

## Section 2: Exemptions

- 16) Activities carried on at or from one of the locations described in section 173 of the Licensing Act 2003
- 17) Alcohol offered as a prize
- 18) Low strength drinks of 1.2% ABV or less

## Section 3: Enforcement

- 19) Responsibility for enforcement
- 20) Breach of the mandatory condition

## Annexes

- Annex A: Alcohol duty rates (2013)
- Annex B: Duty plus VAT permitted prices (2013)
- Annex C: Duty plus VAT permitted price calculator (2013)
- Annex D: Implementation checklist
- Annex E: Frequently Asked Questions

# Introduction

## Overview: banning the sale of alcohol below the cost of duty plus VAT

On 23 March 2012 the Government launched its Alcohol Strategy, which aims to radically reshape the approach to alcohol and reduce the number of people drinking to excess. The Alcohol Strategy is targeted at harmful and hazardous consumers and aims to limit the impact on responsible consumers. The Government's response to the Alcohol Strategy consultation, published on 17 July 2013, set out the Government's intention to ban below cost selling to tackle the availability of below cost alcohol.

The Government has established 'cost' as the amount of 'duty plus VAT', defined as the level of alcohol duty ('duty') for a product plus value added tax ('VAT') payable on the duty element of the product price.

This guidance provides a single point of reference for suppliers of alcohol and local authorities in England and Wales for banning the sale of alcohol below the cost of duty plus VAT.

This guidance document provides comprehensive information regarding implementation of the relevant legislation, methods of calculating the amount of duty plus VAT (referred to in legislation as "the permitted price") and effective enforcement of the ban. The content of this guidance relates to proposals to be introduced as draft legislation in early 2014. Therefore the content is subject to parliamentary approval of legislation; if approval is obtained, the legislation will come into force in April 2014.

The ban will prevent businesses from selling alcohol at heavily discounted prices and aims to reduce excessive alcohol consumption and its associated impact on alcohol related crime and health harms.

## Who the ban applies to

The ban is a new licensing condition of the Mandatory Code of Practice. The Mandatory Code of Practice applies to all licensed premises, including those with club premises certificates, in England and Wales.

# Section 1: Implementing the ban

## Responsibility for ensuring compliance of the mandatory condition at premises

Responsibility for ensuring compliance with the mandatory condition setting out the permitted price is the responsibility of a “relevant person”. We have defined “relevant person” (in relation to premises licences) as the premises licence holder, designated premises supervisor or personal licence holder and (in relation to club premises certificates) a member or officer of a club who is present and able to prevent a supply of alcohol.

The premises licence holder, designated premises supervisor or personal licence holder is responsible for ensuring that any person (if different from the licence holder) responsible for amending prices on the premises is aware of the legal requirement to sell alcohol at or above the cost of duty plus VAT on that premises.

In circumstances where local store managers are not responsible for amending the prices in-store, responsibility is applicable to the company headquarters and the person, or persons, who are a “relevant person” under the mandatory condition.

## How to calculate the permitted price of duty plus VAT

The level of duty plus VAT is calculated by taking the relevant excise duty figure for a particular product and then applying the current rate of VAT to this amount.

Duty rates differ in accordance with the type of alcohol and often the strength of the product. There are three categories for calculating the permitted price of duty plus VAT. The three categories are:

- 1) Beer
- 2) Spirits, spirit-based ready-to-drinks, wine and made-wine (exceeding 22% ABV)
- 3) Wine, made-wine and cider (not exceeding 22% ABV)

We use the following calculations to determine the permitted price for each product:

### **Beer permitted price = Duty + VAT**

Where Duty (pence) = volume (litres) x strength (% ABV) x duty rate

### **Spirits, spirit-based ready-to-drinks, wine and made-wine (exceeding 22%) permitted price = Duty + VAT**

Where Duty (pence) = volume (litres) x strength (% ABV) x duty rate

### **Wine, made-wine and cider (not exceeding 22% ABV) permitted price = Duty + VAT**

Where Duty (pence) = volume (litres) x duty rate

(Note: duty rates for beer, wine, made-wine and cider are given in pounds per hectolitre. For clarity of calculation, and because of the small quantities involved, this has been translated into pence per litre, which is an identical figure. Duty rates for spirits and other products over 22% ABV are given in pounds per litre of pure alcohol. For clarity of calculation, and because of the small quantities involved, this has been translated into pence per centilitre (i.e. 10ml) of pure alcohol, which is also an identical figure.)

Where a retailer wishes to sell drinks that are mixed, for example, in a cocktail, they should calculate the permitted price using the alcohol contained in the drink.

Where permitted prices are not a whole number of pennies, the price should be rounded up to the nearest whole number.

The duty rates are set out in [Annex A](#).

## Worked examples:

### 440ml can of 4% ABV lager

Beer permitted price = (volume (litres) x strength (% ABV) x duty rate) + VAT  
= (0.44 x 4 x 19.12) x 1.2  
= 40.38144, rounded up to 41 pence

### 440ml can of 9% ABV lager

Beer permitted price = (volume (litres) x strength (% ABV) x duty rate) + VAT  
= (0.44 x 9 x (19.12 + 5.09)) x 1.2  
= 115.04592, rounded up to £1.16

### 70cl bottle of 37.5% ABV vodka

Spirits permitted price = (volume (litres) x strength (% ABV) x duty rate) + VAT  
= (0.7 x 37.5 x 28.22) x 1.2  
= 888.93, rounded up to £8.89

### 500ml bottle of 4.5% ABV sparkling cider

Cider permitted price = (volume (litres) x duty rate) + VAT  
= (0.5 x 39.66) x 1.2  
= 23.796, rounded up to 24 pence

### 500ml bottle of 4.5% ABV made-wine

Made-wine permitted price = (volume (litres) x duty rate) + VAT  
= (0.5 x 113.01) x 1.2  
= 67.806, rounded up to 68 pence

### 750ml bottle of 12.5% ABV wine

Wine permitted price = (volume (litres) x duty rate) + VAT  
= (0.75 x 266.72) x 1.2  
= 240.048, rounded up to £2.41

### Cocktail containing 50ml 19% ABV port and 275ml 4% ready-to-drink (RTD)

Wine permitted price = (volume (litres) x duty rate) + VAT  
= (0.05 x 355.59) x 1.2  
= 21.3354

RTD permitted price = (volume (litres) x strength (% ABV) x duty rate) + VAT

$$= (0.275 \times 4 \times 28.22) \times 1.2$$

$$= 37.2504$$

Total permitted price = 21.3354 + 37.2504  
= 58.5858, rounded up to 59 pence

It should be noted that there are different duty rates within each of the categories of beer and wine and cider, and that the appropriate rate should be used. See [Annex A](#) for details of the duty rates for each category.

Product	Description	Exceptions	Notable products
Beer	In the Alcoholic Liquor Duties Act 1979, beer is defined as including ale, porter, stout and any other description of beer, and any liquor which is made or sold as a description of beer or as a substitute for beer, whose alcoholic strength exceeds 0.5% ABV. This includes mixtures of beer with non-alcoholic drinks, (for example, with lemonade to produce shandy). Also classified as beer for duty purposes are certain mixtures of beer with alcoholic liquors or substances where the final product strength does not exceed 5.5% ABV	Beer below 1.2% ABV is not subject to duty. Lower-strength beer (2.8% and below) pays the reduced rate. Higher-strength beer (over 7.5% ABV) pays the general beer duty rate plus the higher-strength duty rate. Beer mixed with spirits will be liable to the spirits rate of duty.	Barley wine
Wine and made-wine	Wine is defined as a drink produced by fermentation of fresh grapes or grape must. Made-wine is any other drink - apart from beer or cider - containing alcohol that is made by fermentation, rather than by distillation or any other process.	Still wine and sparkling wine are in different duty brackets. Wine is liable to the sparkling rates of duty if it has an actual alcoholic strength by volume exceeding 5.5 per cent but not exceeding 15 per cent ABV and: in a closed bottle with excess pressure, due to carbon dioxide, of three bars or more at 20°Centigrade, or regardless of pressure, is contained in a closed bottle with a 'mushroom	Wine: Port Sherry Madeira Vermouth Cinzano Mulled wine  Made-wine: Mead Sake Ginger wine Fruit-flavoured cider (flavoured with anything except apple juice)

		shaped stopper' held in place by a tie or fastening.	
Cider and perry	<p>For a drink to be classed as cider or perry for duty purposes, the following apply:</p> <p>A pre-fermentation juice requirement. At least 35 per cent apple or pear juice must be included in any mixture from which fermentation takes place.</p> <p>A final product juice requirement. A minimum of 35 per cent apple or pear juice must be included overall in making the final product.</p>	<p>For duty purposes, the following may not be added to cider:</p> <p>(i) any alcoholic liquor, or</p> <p>(ii) any liquor or substance which communicates colour or flavour,</p> <p>other than such as the Commissioners may allow as appearing to them to be necessary to make cider (or perry).</p> <p>The following are classed as made-wine or spirits:</p> <p>cider of 8.5% ABV or more, or labelled or described as 8.5% ABV or more</p> <p>cider including anything other than certain permitted ingredients, or ingredients in more than specific quantities</p>	
Spirits and ready-to-drink spirit based products	There is one duty band for spirits and ready-to-drink products where the alcohol content comes from spirits.	Fortified wines, including sherry and port, should be classed as wines.	

Where a retailer is uncertain about the category to which a product should belong, the retailer should calculate the permitted price using both categories, and use the higher of the duties.

HMRC have published [detailed guidance](#) on the categories of duty payable, and its [guide to alcoholic duties and procedures](#) gives further detail on types of alcoholic drinks.

See [Annex B](#) for a list of the permitted prices of the most common type of alcohol products. We have also provided a link to an online permitted price calculator at [Annex C](#) which can be used to calculate the permitted prices of those products that are not listed in [Annex B](#).

The duty rate that applies on the day of sale to the customer will be the duty rate that should apply for the calculation of the permitted price.

## Changes to excise duty and VAT

Duty rates may change each year, typically following the Chancellor's Budget. Therefore, those who supply alcohol will need to ensure the new duty rates are applied to the three formulae in the preceding section when duty rates change.

Revised duty rates usually take effect a short time (usually around five days) after the Budget is announced by the Chancellor. It is required that businesses implement changes to their pricing systems within fourteen calendar days of implementation of the new rate to ensure compliance with the mandatory condition.

The same rule will apply to any change in the rate of VAT.

## Updating of pricing systems

Businesses and others who supply alcohol will need to ensure that their pricing systems are accurate to prevent any sale of alcohol below the cost of duty plus VAT. This includes ensuring that prices are accurate on shelves, barcodes, menus and price lists, where appropriate.

It is therefore recommended that businesses follow a series of steps to successfully implement the regulation on the premises. A recommended series of steps can be found at [Annex D](#).

## Multibuy promotions

Businesses can continue to sell alcohol as part of buy one get one free promotions. However, businesses will need to ensure that the total purchase price for the package of products is not below the aggregate of the duty plus VAT permitted price for each product comprised in the package. To achieve this, businesses will need to calculate the total of the combined permitted price of each alcoholic product in the promotion.

For example, if a business runs a promotion for the sale of a bottle of whisky with a free bottle of wine then the business will need to combine the permitted price for each of the bottle of whisky (£9.49 for 700ml bottle of whisky with a strength of 40%) and the bottle of wine (£2.41 for 750ml bottle of wine with a strength of 11.5%).  $£9.49 + £2.41 = £11.90$  permitted price for both items as part of a buy one get free promotion.

## Multibuy promotions on non-alcoholic products

In instances where businesses run a promotion for the sale of an alcoholic product and a free non-alcoholic product (such as chocolates, flowers etc.) and vice-versa, businesses will need to ensure that the total purchase price of the promotion is not below the permitted price of the alcohol product comprised in it (or aggregate of the permitted prices if there is more than one alcohol product) as detailed above.

For example, if a retailer runs a promotion for a meal deal that includes a free bottle of wine then the retailer will need to ensure that the selling price of the meal deal is not below the permitted price of the wine.



## Multipack products

Businesses can continue to sell bulk items of alcohol, such as multipacks of beer or ready-to-drink products. Businesses will need to ensure that each multipack is sold above the aggregate of the permitted price of each product in it.

For example, if a business runs a promotion to sell a pack with 24 440ml cans of 4% ABV lager in one multi-pack they will need to calculate the total volume of lager in order to calculate the permitted price.

$$24 \times 440\text{ml} = 10.560 \text{ litres}$$

$$\begin{aligned} \text{Beer permitted price} &= (\text{volume (litres)} \times \text{strength (\% ABV)} \times \text{duty rate}) + \text{VAT} \\ &= (10.560 \times 4 \times 19.12) \times 1.2 \\ &= 969.15456, \text{ rounded up to } \pounds 9.70 \end{aligned}$$

## Inclusive drinks

Many businesses run promotions in hotels and restaurants, for example, a free bottle of champagne with a hotel room or a drink included in the price of a table meal. Businesses can continue to run these types of special promotions but will need to ensure that the permitted price of the alcoholic product in question is included in the overall price of the promotion.

For example, where a pub offers a table meal with a pint of 4% beer included in the price, the total cost of the table meal must be at or above the permitted price of the beer (ie 53p).

## Complementary drinks

Free drinks provided an ad hoc basis, for instance those offered as compensation for late food service, do not count as sales because the customer has not paid anything for the drink.

## Discount coupons

Businesses may continue to offer discount coupons for alcoholic drinks, but must ensure that the price of the product after all applicable discounts are applied is above the permitted price of the product.

Where a coupon is offered by a producer for a discount on alcohol, retailers should ensure that the price of the drink does not fall below the floor price as a result of that coupon being applied.

Where 'threshold spend' coupons are offered to customers (e.g. save £2 when you spend £15), they may be used to purchase alcohol as long as the total cost of the sale is not below the permitted price for the alcoholic products.

## Reward cards

Reward points and vouchers can continue to be used to buy alcohol, either in the store where they were earned, or at partner retailers, on the condition that the points redeemed have an equivalent cash value that is not below the permitted price of the product. Where retailers offer a promotion on reward points or vouchers, the original value of the voucher shall be taken into account.

The price of an alcoholic product is considered to be the amount of money paid by the purchaser at the time of sale. Proxy benefits to the customer from the sale, for instance in the form of reward points, should not be considered as a part of the purchase price, as they have a cash value only in respect of subsequent sales, and not the present one. For instance, if a promotional voucher is offered to customers for reward points in exchange for buying a particular alcoholic product, the value of the points shall not be taken into account when calculating whether the permitted price has been charged.

## **Staff discount**

Companies can offer staff discount, as long as the price after all discounts are applied is above the permitted price.

## **Online internet sales**

The ban will apply to all sales of alcohol that take place (i.e. the alcohol is despatched) within England and Wales.

As detailed above, businesses will need to ensure that the online price of all alcohol products are sold above the duty plus VAT permitted prices.

## Section 2: Exemptions

The following are exempt from the ban:

- Activities carried on at or from one of the locations described in section 173 of the Licensing Act 2003
- Alcohol offered as a prize in an incidental non-commercial lottery under section 175 of the Licensing Act 2003
- Low strength beer and other drinks of 1.2% ABV or less

### Activities carried on at or from one of the locations described in section 173 of the Licensing Act 2003

Section 173 of the Licensing Act 2003 states that:

(1) An activity is not a licensable activity if it is carried on— .

- (a) aboard an aircraft, hovercraft or railway vehicle engaged on a journey,
- (b) aboard a vessel engaged on an international journey,
- (c) at an approved wharf at a designated port or hoverport,
- (d) at an examination station at a designated airport,
- (e) at a royal palace,
- (f) at premises which, at the time when the activity is carried on, are permanently or temporarily occupied for the purposes of the armed forces of the Crown,
- (g) at premises in respect of which a certificate issued under section 174 (exemption for national security) has effect, or
- (h) at such other place as may be prescribed.

This would include sales at airside bars and shops at international airports and seaside at international ferry terminals.

Therefore, a ban on below cost sales will not apply to any alcoholic products sold at these locations.

### Alcohol offered as a prize in an incidental non-commercial lottery under section 175 of the Licensing Act 2003

The supply of alcohol in sealed containers as a prize is exempt from the condition under existing provision about incidental non-commercial lotteries in section 175 of the Licensing Act 2003 (an incidental non-commercial lottery is defined in Part 1 of Schedule 11 to the Gambling Act 2005).

This will therefore ensure that free alcohol (in sealed containers) can continue to be awarded as prizes in competitions and raffles in, for instance, community charity events, without being subject to a ban on below cost sales.

### Low strength drinks of 1.2% ABV or less

There is currently no duty paid on alcoholic drinks of 1.2% ABV or less. Therefore, any drink that has a strength of 1.2% ABV or less will be exempt from the condition.

Under section 191(1)(a) of the Licensing Act 2003, the definition of alcohol does not include alcohol which is of a strength not exceeding 0.5% at the time of the sale or supply in question.

# Section 3: Enforcement

## Responsibility for enforcement

The ban will be enforced by local authorities including licensing authorities, Trading Standards and the police.

It is recommended that enforcement officers only check the prices of heavily discounted alcohol products as these products are most likely to pose a risk of breaching the new mandatory condition. We do not expect enforcement officers to check the price of all alcohol products on the premises unless they feel it is appropriate to do so.

Where necessary, enforcement officers may request a copy of the premises pricing lists and take away for analysis to compare against the duty plus VAT permitted prices. This will ensure that enforcement officers do not spend a substantial amount of time calculating the permitted prices of products on the premises where conditions may be challenging.

## Breach of the ban under the Mandatory Code of Practice

Businesses are required by law to comply with the licensing conditions of the Mandatory Code.

Failure to comply with the permitted price condition may be an offence under section 136 of the Licensing Act 2003. This may also result in a review of the licence, or the service on the premises of a closure notice under section 19 of the Criminal Justice and Police Act 2001.

# Annex A

## Alcohol duty rates (2013)

Alcohol type	Rate from 25/03/2013
Rate £ per litre of pure alcohol	
Spirits	28.22
Spirits-based: Ready-to-drinks	28.22
Wine and made-wine: Exceeding 22% ABV	28.22
Rate £ per hectolitre per cent of alcohol in the beer	
Beer - General Beer Duty	19.12
Beer - High Strength: Exceeding 7.5%ABV - in addition to the General Beer Duty	5.09
Beer - Lower Strength: Exceeding 1.2% - not exceeding 2.8% ABV	9.17
Rate £ per hectolitre of product	
Still cider and perry: Exceeding 1.2% - not exceeding 7.5% ABV.	39.66
Still cider and perry: Exceeding 7.5% - less than 8.5% ABV.	59.52
Sparkling cider and perry: Exceeding 1.2% - not exceeding 5.5% ABV.	39.66
Sparkling cider and perry: Exceeding 5.5% - less than 8.5% ABV.	258.23
Wine and made-wine: Exceeding 1.2% - not exceeding 4% ABV	82.18
Wine and made-wine: Exceeding 4% - not exceeding 5.5% ABV.	113.01
Still wine and made-wine: Exceeding 5.5% - not exceeding 15% ABV.	266.72
Wine and made-wine: Exceeding 15% - not exceeding 22% ABV.	355.59
Sparkling wine and made-wine: Exceeding 5.5% - less than 8.5% ABV.	258.23
Sparkling wine and made-wine: 8.5% and above - not exceeding 15% ABV	341.63

# Annex B

## Duty plus VAT permitted prices (2013)

Based on the 2013 duty rates, examples of an approximate permitted price after a ban on sales below duty plus VAT would be as follows:

Product	Size	ABV (%)	Permitted price
Beer/Lager	275ml	5.0	32p
	300ml	2.0	7p
	300ml	5.0	35p
	330ml	4.5	35p
		5.0	38p
		6.0	46p
	440ml	4.0	41p
		4.5	46p
		5.0	51p
		9.0	£1.16
	500ml	4.0	46p
		4.5	52p
		5.0	58p
	568ml	4.0	53p
		4.5	59p
		5.0	66p
8.5		£1.41	
Sparkling cider and perry	330ml	4.5	16p
	440ml	5.0	21p
	568ml	4.5	28p
	750ml	7.5	£2.33
	2 litre	7.5	£6.20

Still cider and perry	568ml	4.5	28p
		7.0	28p
		8.0	41p
Wine and made-wine	750ml	4.0	74p
		5.5	£1.02
Still wine and made-wine	750ml	11.5	£2.41
		20	£3.21
Sparkling wine and made-wine	750ml	8.0	£2.33
		11.5	£3.08
Spirits	70cl	17	£4.03
		23	£5.46
		37.5	£8.89
		40	£9.49
	1 litre	17	£5.76
		23	£7.79
		37.5	£12.70
		40	£13.55
Spirit-based ready-to-drinks	250ml	6.4	55p
	275ml	4.0	38p
		4.5	42p
	330ml	6.0	68p
	700ml	4.0	95p



# Annex C

## Duty plus VAT permitted price calculator (2013)

<b>Beer</b>	
Insert volume (in ml) i.e. 440ml can - insert 440	Insert abv (in %) i.e. 4.4% abv - insert '4.4'
<b>Duty + VAT floor price:</b> £0.00	< this is a result. Do not enter a value.
<b>High Strength Beer (exceeding 7.5% abv)</b>	
Insert volume (in ml) i.e. 440ml can - insert 440	Insert abv (in %) i.e. 4.4% abv - insert '4.4'
<b>Duty + VAT floor price:</b> £0.00	< this is a result. Do not enter a value.
<b>Low Strength Beer (exceeding 1.2% abv, not exceeding 2.8% abv)</b>	
Insert volume (in ml) i.e. 440ml can - insert 440	Insert abv (in %) i.e. 4.4% abv - insert '4.4'
<b>Duty + VAT floor price:</b> £0.00	< this is a result. Do not enter a value.
<b>Still cider and perry</b>	
Insert volume (in ml) i.e. 1l bottle - insert 1000	Insert abv (in %) i.e. 5.5% abv - insert '5.5'
<b>Duty + VAT floor price:</b> £0.00	< this is a result. Do not enter a value.
<b>Sparkling cider and perry</b>	
Insert volume (in ml) i.e. 1l bottle - insert 1000	Insert abv (in %) i.e. 5.5% abv - insert '5.5'
<b>Duty + VAT floor price:</b> £0.00	< this is a result. Do not enter a value.
<b>Wine and made-wine</b>	
Insert volume (in ml) i.e. 70cl bottle - insert 700	Insert abv (in %) i.e. 13.5% abv - insert '13.5'
<b>Duty + VAT floor price:</b> £0.00	< this is a result. Do not enter a value.
<b>Sparkling wine and made-wine</b>	
Insert volume (in ml) i.e. 70cl bottle - insert 700	Insert abv (in %) i.e. 13.5% abv - insert '13.5'
<b>Duty + VAT floor price:</b> £0.00	< this is a result. Do not enter a value.
<b>Spirits</b>	
Insert volume (in ml) i.e. 70cl bottle - insert 700	Insert abv (in %) i.e. 37.5% abv - insert '37.5'
<b>Duty + VAT floor price:</b> £0.00	< this is a result. Do not enter a value.

# Annex D

## Implementation checklist

The following steps are advised in order to ensure that businesses are selling their alcohol products above the permitted prices for duty plus VAT.

Calculate the duty plus VAT permitted price of an alcohol product



Amend the price (if required) on Central Pricing systems to ensure that the correct price is associated with the barcode on the product



Amend the price on price tags/and or pricing displays on shop shelves



Amend the price on menus



Amend the price on promotional posters, flyers and other materials



Amend the price on websites

# Annex E

## Frequently asked questions

### When will the ban come into effect?

The condition providing for a ban on below cost sales would “go live” when the order is brought into force. This is expected to be 6 April 2014.

On and after this date, the mandatory condition would apply to licensed premises and they would be required to comply with it.

### Calculation of prices and updating

#### What if duty is paid on the alcohol at one rate, but then the duty that applies at the point of sale is different (e.g. following a change in duty at the Budget)?

The duty that applies at the time that the sale is made is the duty to be used in the calculation of the permitted price.

#### How will prices be rounded? For example, if the duty plus VAT on a can of beer is 49.3p, would shops be able to charge at 49p, rounding down, even if this is below the permitted price?

Consistent with the provision in the Alcoholic Liquor Duties Act 1979, prices should be rounded up to the nearest penny.

#### How will retailers know which products attract which rate of duty (for instance, products such as alcoholic ginger beer)?

HMRC produces notices which define the products which are included within the duty categories. If a retailer is in doubt about the category of duty rate payable for a particular product, they should use the higher of the possible permitted prices. For instance, if unsure if a product is a cider or a made-wine, prices for both categories should be calculated:

A 500ml bottle of 4.5% ABV product

Cider =  $39.66 \times 0.5 \times 1.2$

= 23.796

= 24p permitted price

Made-wine =  $113.01 \times 0.5 \times 1.2$

= 67.806

= 68p permitted price

In this example, the permitted price for the product would be 68p.

#### What about small brewers that pay reduced duty?

Where retailers sell alcohol which is produced by breweries subject to reduced rates of duty under the Small Breweries' Relief scheme, the permitted price for that alcohol may reflect the reduced duty rate. However, retailers should be able to demonstrate that they have taken reasonable steps to satisfy themselves that the reduced rate of duty applies, and where there is doubt, retailers should consider applying the higher duty rate to determine the permitted price.

#### How will this affect retailers' obligations under the Grocery Suppliers' Code of Practice (GSCOP)?

The price agreed between the supplier and retailer for products is outside the Code, as is the price the retailers charge consumers. However, if the retailer believes that they need to vary a supply agreement to comply with new legislation, section 3(2)(a) of part 3 of Code allows retailers to vary supply agreements retroactively to allow for circumstances outside their control.

To comply with section 3(3) of part 3 of the Code, the retailer must give the supplier reasonable notice of any variation. A rise in duty rates may be a situation to which this part of the Code could apply.

## Application and enforcement

### **How will this be applied and how will it be enforced?**

As a mandatory condition, the measure is capable of being enforced in the same way as any other condition in a licence.

This provides that a 'relevant person' shall ensure that no alcohol is sold or supplied for consumption on or off the premises for a price which is less than the permitted price. The relevant person is defined as the premises licence holder, designated premises supervisor (where there is one in relation to the licence) or personal licence holder (there is also provision specifically in respect of clubs).

The prohibition on sales below the prescribed permitted price is a condition. As such, the provisions in the Licensing Act 2003 which apply to conditions (e.g. sections 136 and 139) also apply to this condition. It is an offence by a person to carry on or attempt to carry on a licensable activity on or from any premises otherwise than under or in accordance with an authorisation (the reference to authorisation includes a condition).

However, it is a defence if the person's act was due to a mistake, or to reliance on information given to him, or to an act or omission by another person, or to some other cause beyond his control, and he took all reasonable precautions and exercised all due diligence to avoid committing the offence.

### **What are the penalties for a breach?**

Non-compliance with the condition is likely to mean that the person who made the sale would commit an offence under section 136 of the Licensing Act 2003.

This carries a penalty (on conviction) of up to 6 months' imprisonment and/or a £20,000 fine. It may also result in the licence being reviewed (on the basis of the crime prevention objective).

### **What if retailers do not have an up to date product price list that enforcement officers can take away from the shop floor?**

The production of a price list on request is optional, as enforcement officers can check prices while on the shop floor.

### **What if the price list that has been produced does not take all promotions into account?**

Enforcement officers should be made aware of any known discrepancies

### **Will the enforcement officer come back at a later time to check prices if some on the list that they have taken away are found to be below permitted price?**

This will be for the enforcement authority to decide.

### **Will enforcement be proactive or reactive?**

This is for individual authorities to decide.

## Saving schemes and other promotions

### **How does this deal with the issues of money off vouchers?**

The retailer would be unable to sell alcohol below the permitted price on the basis of any discount arising by virtue of a voucher.

Consumers may still be able to benefit from a discount voucher or other promotion if either the price payable for the alcohol remains above the permitted price after the discount is applied or if they purchase non-alcoholic products with the alcohol (as the prohibition doesn't apply to those products).

### **When alcohol is only part of a basket of goods and a discount or voucher is applied, how should that discount be considered when calculating the permitted price?**

The sale would not breach the condition provided that the aggregate price paid is not less than the permitted price of the alcohol comprised in the sale.

In relation to a sale of two or more alcoholic products, this is the aggregate of the permitted price for each alcoholic product comprised in the sale.

### **What if a supplier voucher takes a price below the permitted price?**

Retailers should be able to show that they have taken all reasonable steps to ensure that discounts applied by supplier vouchers do not take the price of a product below the permitted price.

### **What about loyalty schemes where customers can collect vouchers as a reward for continued custom over a period of time?**

Where the effect of the scheme is to give a person something which in fact has a cash value in a sale of alcohol, its value is taken into account in determining whether its value means that the alcohol was sold below the permitted price.

### **Can retailers still offer staff discount?**

Yes, as long as the price after all discounts are applied is above the permitted price.

### **Do free drinks offered as compensation (e.g. for a delayed meal) count as sales?**

Free drinks offered on ad hoc or impromptu basis, for example as compensation for poor service, do not count as sales because the customer has not paid anything for the drink. This is different to, for instance, 'meal deals' where the drink is offered as part of a package of goods.

### **Where a receipt shows a drink at zero pence, does this count as a sale?**

This does not count as a sale as it has no monetary value.

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## Report to the *Licensing Committee*

*10<sup>th</sup> April 2014*

### *Update on Deregulation*



**Report Author:** *Julia Cleary*  
**Job Title:** *Democratic Services Manager*  
**Email:** *Julia.cleary@hotmail.co.uk*  
**Telephone:** *01782 742227*

### **Background**

Six amendments to the Licensing Act 2003 have been included on the Deregulation Bill that was introduced to Parliament at the end of January 2014.

The six areas include the following:

- Changes to the number of TENS permitted per year
- Abolishment of Personal Licences
- Liqueur Confectionery sales now permitted to under 16s
- Late night refreshment exemptions
- Report loss or theft of a licence
- Exhibition of films in community premises

However, during the consultation on deregulation in relation to personal alcohol licences and discussions with partners, a number of suggestions were made to further develop and tighten the existing system, rather than to deregulate it. The Government has welcomed these suggestions in the context of its consultation on proposed deregulation. Reforms to the licensing regime must be proportionate and cost effective. The Government has stated that it will maintain an on-going, open dialogue with its partners and ensure that any proposed changes to alcohol licensing continue to strike a balance between removing unnecessary bureaucracy for responsible businesses but maintaining important safeguards.

**Details in relation to alcohol and entertainment deregulation contained within the January 2014 Bill:**

**38 Temporary event notices: increase in maximum number of events per year**

(1) In section 107 of the Licensing Act 2003 (counter notice where permitted limits exceeded), in subsection (4) (maximum number of events per year), for “12” substitute “15”.

(2) The amendment made by this section has effect for the year 2016 and subsequent years.

**39 Personal licences: no requirement to renew – NO LONGER GOING AHEAD**

(1) In section 115 of the Licensing Act 2003 (period of validity of personal licence), in subsection (1), for the words after “A personal licence” substitute “has effect indefinitely.”

(2) The amendment made by subsection (1), and the consequential amendments made by Schedule 15, apply in relation to—

(a) a personal licence granted under section 120 of the Licensing Act 2003 on or after the day on which this section comes into force;

(b) a personal licence granted under section 120 of that Act before that day, or renewed under section 121 of that Act before that day, for a period expiring on or after that day.

(3) Accordingly, any term in a personal licence granted as mentioned in subsection (2)(b) which provides for it to have effect only for a particular period has no effect on or after the day on which this section comes into force.

**40 Sale of liqueur confectionery to children under 16: abolition of offence**

Section 148 of the Licensing Act 2003 (sale of liqueur confectionery to children under 16) is repealed.

**41 Late night refreshment**

(1) Schedule 2 to the Licensing Act 2003 (provision of late night refreshment) is amended as follows.

(2) In paragraph 1(1) (definition of “provides late night refreshment”), in the words after paragraph (b), after “paragraph” insert “2A,”.

(3) After paragraph 2 insert—

*“Exempt supplies: designated areas, descriptions of premises and times*

“2A (1) The supply of hot food or hot drink is an exempt supply for the purposes of paragraph 1(1) if it takes place—

(a) on or from premises which are wholly situated in an area designated by the relevant licensing authority;



(b) on or from premises which are of a description designated by the relevant licensing authority; or

(c) during a period (beginning no earlier than 11.00 p.m. and ending no later than 5.00 a.m.) designated by the relevant licensing authority.

(2) A licensing authority may designate a description of premises under sub-paragraph (1)(b) only if the description is one that is prescribed by regulations.

(3) A designation under sub-paragraph (1) may be varied or revoked by the licensing authority that made it.

(4) A licensing authority that makes, varies or revokes a designation under sub-paragraph (1) must publish the designation, variation or revocation.

(5) In sub-paragraph (1) references to the “relevant licensing authority”, in relation to a supply of hot food or hot drink, are references to—

(a) the licensing authority in whose area the premises on or from which the food or drink is supplied are situated, or (b) where those premises are situated in the areas of two or more licensing authorities, any of those authorities.”

#### **42 Removal of requirement to report loss or theft of licence etc to police**

In the Licensing Act 2003, omit the following provisions (which impose requirements for the loss or theft of certain documents to be reported to the police before copies may be issued)—

(a) in section 25 (premises licence or summary), subsection (3)(b), and the “and” before it;

(b) in section 79 (club premises certificate or summary), subsection (3)(b), and the “and” before it;

(c) in section 110 (temporary event notice), subsection (4)(b), and the “and” before it;

(d) in section 126 (theft, loss, etc of personal licence), subsection (3)(b), and the “and” before it.

#### **43 Exhibition of films in community premises**

In the Licensing Act 2003, in Schedule 1 (provision of regulated entertainment), in Part 2 (exemptions), after paragraph 6 insert—

*“Film exhibitions: community premises*

6A (1) The provision of entertainment consisting of the exhibition of a film at community premises is not to be regarded as the provision of regulated entertainment for the purposes of this Act if the following conditions are satisfied.

(2) The first condition is that prior written consent for the entertainment to take place at the community premises has been obtained, by or on behalf of a person concerned in the organisation or management of the entertainment—

(a) from the management committee of the community premises, or

(b) where there is no management committee, from—

(i) a person who has control of the community premises (as occupier or otherwise) in connection with the carrying on by that person of a trade, business or other undertaking (for profit or not), or (ii) where there is no such person, an owner of the community premises.

(3) The second condition is that the entertainment is not provided with a view to profit.

(4) The third condition is that the entertainment takes place in the presence of an audience of no more than 500 persons.

(5) The fourth condition is that the entertainment takes place between 8am and 11pm on the same day.

(6) The fifth condition is that the film classification body or the relevant licensing authority has made a recommendation concerning the admission of children to an exhibition of the film and—

(a) where a recommendation has been made only by the film classification body, the admission of children is subject to such restrictions (if any) as are necessary to comply with the recommendation of that body;

(b) where a recommendation has been made only by the relevant licensing authority, the admission of children is subject to such restrictions (if any) as are necessary to comply with the recommendation of that authority;

(c) where recommendations have been made both by the film classification body and the relevant licensing authority, the admission of children is subject to such restrictions (if any) as are necessary to comply with the recommendation of the relevant licensing authority.

(7) In sub-paragraph (6) the reference to the “relevant licensing authority”, in relation to the exhibition of a film at particular community premises, is a reference to—

(a) the licensing authority in whose area the premises are situated, or

(b) where the premises are situated in the areas of two or more licensing authorities, those authorities or (as the context requires) such of those authorities as have made a recommendation.

(8) In this paragraph—

“children” and “film classification body” have the same meaning as in section 20;

“owner”, in relation to community premises, means—

(a) a person who is for the time being entitled to dispose of the fee simple in the premises, whether in possession or in reversion, or

(b) a person who holds or is entitled to the rents and profits of the premises under a lease which (when granted) was for a term of not less than 3 years.”

## Briefing Note to the *Licensing Committee*

*10<sup>th</sup> April 2014*

### *Rewiring Public Services*



**Report Author:** *Julia Cleary*  
**Job Title:** *Democratic Services Manager*  
**Email:** *Julia.cleary@newcastle-staffs.gov.uk*  
**Telephone:** *01782 742227*

#### **Introduction**

New simpler and more modern licensing laws have been put forward by the Local Government Association, which has called for licensing reform to provide a more effective and efficient system to businesses and the public.

The LGA report which is attached to this briefing note, 'Open for Business: Rewiring Licensing', calls for a consistent, simple, system which can address the public's and businesses' concerns.

The LGA argues that businesses and councils have to deal with an outdated and complex licensing system which imposes unnecessary costs and burdens. They propose a major overhaul to scrap some licensing laws and update others. The changes would include allowing businesses to go through a single application process, leading to a single licence tailored to their business needs, introducing new powers to withdraw licences for non-compliance, which would lead to a simpler 'licence for life' principle.

The LGA also advocate new licensing objectives to help councils tackle clustering, especially of licensed premises, on high streets.

Proposals include:

- Government undertakes a comprehensive review of the licensing legislation to determine what can be scrapped, or amended and consolidated.
- A reformed licensing framework should be overseen by a single Government Department. The Government should deliver on their overdue commitment to localise alcohol fees.

- Licensing decisions should be reached locally based on a broader set of licensing objectives that includes the protection of public health. Businesses should be able to apply to councils for a single licence tailored to their business needs
- The licence for life should be consistently applied to all licences with clear mechanisms for addressing issues of non-compliance
- The process for appeal should be transparent and consistent across all licences ensuring no applicant is disadvantaged.
- When granting licences councils should be able to effectively consider local representation, where there is a public interest.
- Government should ensure that councils have the legal flexibility to offer diverse payment options to businesses.
- Councils should consider what more they can do to assist businesses, including direct debits and instalments.

# REWIRING PUBLIC SERVICES

REWIRING LICENSING





# OPE

## SUMMARY

<a href="#">Summary</a>	1
<a href="#">Introduction</a>	3
<a href="#">A complex picture – current licensing frameworks</a>	5
<a href="#">What should a reformed licensing framework look like?</a>	12
<a href="#">Next steps to delivering licensing reform</a>	16
<a href="#">Annex 1: list of local authority licences</a>	19
<a href="#">Annex 2: licensing snapshot summary</a>	21

Licensing exists to protect both consumers and businesses. Done well, it can support businesses to develop in a way that manages the risk of potentially dangerous or irresponsible activities and provides assurance to local residents.

But licensing frameworks have evolved in a piecemeal manner over many years, and the historic, fragmented and complex nature of licensing imposes unnecessary burdens on councils and businesses. Despite it being over 15 years since the Better Regulation Taskforce called for a reform of outdated licensing laws, many of the problems identified then are still unresolved.

‘Open for Business: Rewiring Licensing’ outlines the Local Government Association’s (LGA) call for full reform of the licensing framework. This would deliver a deregulatory approach that frees up business and council time while maintaining important safeguards for local communities and businesses.



Issue	Proposal
Licensing legislation is inconsistent, fragmented and sometimes outdated.	Government undertakes a comprehensive <b>review of licensing legislation to determine what can be scrapped, or amended and consolidated.</b>
Licensing is underpinned by multiple Acts of Parliament with regulations overseen by different government departments.	A reformed <b>licensing framework should be overseen by a single government department.</b>
Licensing has long operated on the concept of full cost recovery, ensuring the cost of operation is borne by businesses rather than taxpayers. This principle has been undermined by nationally set fees.	The Government should deliver on their overdue commitment to <b>localise alcohol fees.</b>
Not all licensing frameworks have clear objectives and do not allow relevant considerations to be taken into account.	Licensing decisions should be reached locally based on a broader set of <b>licensing objectives that includes the protection of public health.</b>
Businesses have to apply for separate licences for each licensable activity they undertake.  The frequency with which a licence must be renewed varies considerably, as does the amount of work involved in each renewal.  Licence appeal processes vary considerably.	Businesses should be able to apply to councils for <b>a single licence tailored to their business needs.</b>  The <b>licence for life should be consistently applied to all licences</b> , with clear mechanisms for addressing issues of non-compliance.  The process for <b>appeal should be transparent and consistent across all licences</b> , ensuring no applicant is disadvantaged.
Community involvement in licensing is patchy and often restrictive.	When granting licences councils should be able to <b>effectively consider local representations</b> , where there is a public interest.
Businesses are not always offered the same flexibility of payment options that are available to council tax payers and suppliers.	Government should ensure that councils have the legal flexibility to offer diverse payment options to businesses. Councils should <b>consider what more they can do to assist businesses, including direct debits and instalments.</b>

# INTRODUCTION



Councils are responsible for issuing more than 150 licences, consents, permits and registrations covering a diverse range of trades and activities. The most commonly known form of council licensing permits the sale of alcohol.

However, councils also issue registrations in relation to food premises and are responsible for licensing hackney carriages and private hire vehicles, pet shops, caravan sites, the sale and storage of petrol, performing animals and hypnotism performances.

Licensing can be defined as formal or official permission from an authority to do something (whether that is owning or using a specific item or carrying on a particular trade); in this paper, we use the term to refer to the collective set of licences, permits, registration and consents issued by councils. Licensing is not a bureaucratic exercise maintained by councils to generate income through licence fees; it exists to protect consumers and businesses.

Done well, it supports businesses to develop and thrive in a way that manages the risk of potentially dangerous or irresponsible economic and social activities harming individuals, businesses and communities. It provides assurances to residents about the businesses they engage with and boosts consumer confidence in an area.

Licensing is an integral part of councils' broader regulatory services. In line with the Local Government Association's (LGA) 'Open for Business' vision for local regulation, regulatory services are increasingly recognised as being at the heart of councils' approaches to economic growth; it is believed that over fifty per cent of a business's contact with a council takes place through regulatory services.

Officers working in licensing, environmental health and trading standards have regular interactions with businesses and can therefore have an important role in helping them become established and grow, at the same time as ensuring they adhere to important safeguards.





## ECONOMIC GROWTH IS BETTER SUPPORTED BY LOCALISED AND SIMPLIFIED REGULATION

Licensing also has an important role to play in helping councils shape the areas in which people live and work. Councillors, as democratic representatives of local communities, should be able to take licensing decisions that are in line with the preferred wishes of those communities.

However, this important work has grown up through a historic patchwork of centrally imposed licensing requirements introduced to tackle specific issues. While many are still relevant today, they are inconsistent, uncoordinated and overlapping. This creates an unnecessary amount of administrative bureaucracy for both businesses and councils as they have to apply for and process multiple licences that often contain the same basic information.

In this paper, we outline our call for full reform of the existing licensing framework. This call forms part of the LGA's broader Rewiring Public Services<sup>1</sup> programme, which sets out proposals to increase the quality and cost effectiveness of public services through comprehensive public service reform.

We believe that economic growth is better supported by localised and simplified regulation linked to councils' clearly defined visions for their communities and places.

In licensing, as in other areas of regulation, this means reviewing what exists to ensure that it serves the purpose it is intended to (and that this purpose is clear); that it is proportionate in terms of the risk it manages; and that it does not unduly burden either the businesses overseen within the licensing framework or the councils responsible for overseeing them.

This would deliver a deregulatory approach that nonetheless maintains important safeguards for communities and businesses.



**Councillor Sir Merrick Cockell**  
Chairman, Local Government Association

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<sup>1</sup> For more information visit: [www.local.gov.uk/campaigns](http://www.local.gov.uk/campaigns)

# A COMPLEX PICTURE - CURRENT LICENSING FRAMEWORKS

## Complex legislative foundations

Licensing currently operates on the basis of a complex maze of often historic legislation owned by a number of different government departments. This imposes burdens for government, councils and businesses and it is left to councils to try and join up these frameworks in a way that makes sense locally.

Licensing controls have been adopted in a piecemeal fashion over many years, typically to tackle very specific issues and often without reference to existing licensing frameworks. This acts as a barrier to joining up licensing approaches in areas of activity that naturally overlap (for example, serving alcohol and food). Some licensing legislation, including the 2003 Licensing Act, prescribes the precise form on which businesses or individuals must apply for a licence.

This prevents councils from developing single application forms for businesses that require licences for different activities, meaning that they may have to apply to different parts of a single council for multiple licences for the same business or premise. Additionally, this level of micro-management wastes resources, requiring that even minor changes to forms need to be put before Parliament.

Piecemeal licensing legislation also creates costs for central government, in terms of the volume of legislation to maintain and try to coordinate. As an example, alcohol licensing is overseen by the Home Office and legislation for entertainment is overseen by the Department for Culture, Media and Sport, but they are the subject of joint statutory guidance.

Therefore, when either department wishes to amend the guidance, it has to formally consult the other.

Alongside the sheer volume of licensing legislation, there are issues with the age of some licensing legislation, some of which has been on the statute for a century or more.

The Town Police Clauses Act 1847, for example, regulates black cabs outside London, while the Police, Factories etc (Miscellaneous Provisions) Act 1916 regulates charity cash collections.

Although legislation can and has been updated, having as its basis statute drafted before modern patterns of behaviour evolved or even existed does not seem to be a sensible starting point for 21st century regulation.

As an example of a more modern piece of licensing legislation, the 2003 Licensing Act brought together the licensing of alcohol, late-night refreshment and regulated entertainment. Arguments remain about some elements of the framework introduced by the 2003 Act and even this is experiencing added complexity as more and more forms of regulated entertainment are exempted from the Act.

But it is indisputable that it is more helpful to both businesses and councils to operate on the basis of a modern framework grounded in recent practice and behaviour.

## **National and local frameworks and the devolved administrations**

One characteristic of the current licensing framework is the degree of complexity in terms of licences that are mandated nationally and others where licensing requirements have been adopted locally in some areas but not others.

For example, licences to run a pet shop or riding establishment, be a scrap metal dealer or establish a caravan site are all mandated nationally, while licences for auction premises, massage and special treatments, street trading, hairdressers and street collections are only necessary if a council has chosen to adopt the requirement for a licence. Some councils want to license these activities and the law allows them to without burdening businesses nationally.

This is localist and deregulatory and we are extremely supportive of this approach. However, the list of activities that councils can 'opt in' to license is outdated and does not include modern activities that are now of concern to some councils (for example, sunbed use). Updating the legal framework for local licensing, and introducing future flexibility about the issues councils can license, would be helpful and reduce the demand for future Parliamentary time to address specific issues.

The devolved administrations are increasingly taking a divergent approach to their licensing schemes. Scotland and Northern Ireland have operated different licensing schemes for many years, while Wales continues to work in a way more comparable to England; both are subject to the 2003 Licensing Act.

Close consideration will need to be given to the requirements of the devolved administrations, and Wales in particular, as the proposals in this report are taken forward.

## **Licensing and planning**

Councils need effective powers to secure economically efficient use of land but also the ability to manage the social, environmental and aesthetic impacts on communities. In practice, however, the distinction between the role of planning and licensing in providing these functions is blurred.

This results in confusion to businesses and a perception of unnecessary duplication of control. It also means councils lack the means to deal with issues such as clustering in an efficient and effective way. Yet residents expect councils to have powers to influence the nature of land use and business activity in their areas.

Resolving these issues will require greater clarity about the distinction between licensing and land use planning in managing how business premises are used. As recent debates on the clustering of betting shops illustrate, neither the planning use class system nor licensing framework, operating individually or jointly, enable councils to effectively manage and mitigate the social impact and public protection aspects of business activity.

This is because use classes group together classes of activity that have a comparable economic impact on an area and licensing objectives are too narrow.



We need a further debate about how these issues can be disentangled to result in use classes that provide effective economic regulation and within them transparent local licensing options to manage the social and public protection impacts.

The distinction between planning and licensing functions needs to be clear, but it is also important that the functions are aligned operationally to provide a joined up and customer focused service to businesses. Many councils are already exploring opportunities to improve customer service for businesses in this area, for example by joining up planning, licensing and other advice at an early stage through pre-application advice services.

### Previous reviews of licensing

There have been several reviews of licensing schemes in recent times, from the Better Regulation Taskforce report that brought in the Licensing Act 2003, to the Law Commission's current review of Taxi and Private Hire Vehicle Legislation. The Penfold Review of 2010 considered the relationship between planning and licensing as part of a wider review, while many of the Focus on Enforcement and Red Tape Challenge reviews have also touched on areas of licensing.

However, these reviews have all looked at specific themes – whether alcohol and entertainment, taxis and private hire, or subject specific issues like scrap metal. There has been no attempt to look across the entirety of licensing schemes and related control mechanisms such as permitting and registrations.

This has missed a clear opportunity to learn from practical experience of other systems, but also to align them in a way that makes sense from the point of view of both licensees and administrators.

Some systems, such as the recent Scrap Metal Dealers Act 2013, have looked at and incorporated best practice from elsewhere, but there is much more than can be done to clarify our expectations of what a licence does, how it operates, and how we ensure fairness for businesses while reflecting the views of local residents.

➤ We believe that overall the legislation that underpins England's multiple licensing frameworks is unnecessarily fragmented and frequently outdated. This creates barriers that prevent councils from issuing licences as efficiently as possible, imposing burdens on both businesses and councils. There is an urgent need for a **comprehensive** review that identifies where legislation can be scrapped, amended or consolidated to create consistency in the frameworks underpinning licensable activities and deregulate where possible. A new licensing framework should subsequently be overseen by a single government department.

## Licensing objectives, council responsibilities and community involvement

Licensing is essentially permissive, with the presumption that a licence will be granted unless specific criteria are not met. These criteria can often be administrative and process-focused, with little scope to consider issues such as the appropriateness of a business to an area.

The Licensing Act 2003 and Gambling Act 2005 do have more strategic objectives which, if not met, provide grounds to refuse a licence application. However, while an improvement on the process-based approach, they are not without their own limitations. More recently, the concept of cumulative impact has been introduced to alcohol licensing, but this idea remains controversial and is often contested in the courts.

It comes as a surprise to many residents that councils and communities are so restricted in being able to influence the type or number of businesses that operate in their areas.

### **Licensing objectives**

Different licensing frameworks operate to different overarching objectives. The 2003 Act has four licensing objectives (the prevention of crime and disorder; public safety; protection of children from harm; maintenance of public order), while the 2005 Gambling Act has three (preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime; ensuring that gambling is conducted in a fair and open way; protecting children and other vulnerable persons from being harmed or exploited by gambling).

These objectives, broad in approach, but still clearly outlining the parameters for granting a licence, serve as a contrast to the majority of licensing frameworks that either do not have stated strategic objectives and/or where licence criteria are administrative and do not provide scope to consider any local context when granting a licence.

Councils want to promote economic growth and support businesses as much as possible. But they are also entrusted with a much wider range of responsibilities that are not reflected in the current licensing objectives, which have not kept up with the delivery of local services and are consequently too narrow.

One example is councils' public health responsibility. Excessive alcohol consumption is estimated to cost the NHS £3.2 billion a year, with additional costs falling to social services, police and businesses. In 2010/11 there were 198,900 hospital admissions directly attributable to alcohol, an increase of 40 per cent since 2002/3.

It is recognised that because health impacts are linked to consumption and the availability of alcohol, there is a need for public health bodies to play an active role in licensing activities; therefore, under the 2003 Act, local health bodies are able to contribute to the licensing process through being a 'responsible authority'.

Yet bizarrely, while this link is recognised, there is no scope for health bodies or councils to oppose or modify an application on health grounds, since the licensing objectives have not been amended.



This prevents democratically elected councillors from reaching decisions based on the health advice of local health experts, despite local health bodies nominally being involved in the licensing process and even where there is evidence of a clear risk to health. Public health is a complex matter when applied to the licensing of individual premises, but it is important that it is considered and the current approach is ineffective.

Economic objectives too, can be frustrated by restrictive licensing schemes. Studies have shown that the greatest footfall in high streets is generated by a diverse offer of retail, leisure and cultural activities located within close proximity. Recognition that licensing can play a place-shaping role, reflected in broader licensing objectives, could help stimulate local economies and increase the desirability of places.

### **Communities and residents**

Communities and residents have a keen interest in the nature and makeup of their area. For many, it will be why they chose to live and work there. Councils listen to the views and needs of their residents on a daily basis, whether through formal consultation measures or informal discussions. This underpins a council's democratic accountability. However, communities can find themselves excluded from being able to meaningfully influence licensing decisions.

Councils have made great strides in providing advice and guidance for individuals and community groups on making licensing representations, but it can still be difficult to meet the evidential basis required, which prevents councillors from taking into account the views and concerns of local residents.

We believe they should be given a greater say in the way their communities look and feel, in the same way that they are able to contribute to wider planning strategies and planning decisions.

➤ It is right that the presumption of licensing should be towards enabling businesses and economic growth; but the current system is too restrictive in terms of the powers given to local people and their councillors to reach local decisions that are right for their areas. There is scope for a broader set of licensing objectives that better reflect councils' diverse range of responsibilities and allow residents to have a greater say.

### **Licensees: the business perspective**

We know that licensing isn't typically the biggest regulatory burden businesses are concerned about<sup>2</sup>. Equally, we know that many businesses are supportive of licensing frameworks for the oversight they provide and the additional validation they imply for licensed businesses. This can be seen in the recent unfavourable response from industry to the Home Office's proposal to scrap the personal alcohol licence, or from the scrap metal industry's support for new licence controls and fees in their industry. In the 2012 Business Perceptions Survey<sup>3</sup>, 80 per cent of businesses reported that they would be concerned about the impact on their relationship with their customers if they were not compliant with relevant regulations.

<sup>2</sup> In a 2011 FSB survey, 8 per cent of small businesses identified local authority licences as the most challenging area of regulatory compliance. Tax administration, health and safety and employment law were cited as the biggest challenges.

<sup>3</sup> [http://www.nao.org.uk/wp-content/uploads/2012/06/Business\\_Perceptions\\_Survey\\_2012.pdf](http://www.nao.org.uk/wp-content/uploads/2012/06/Business_Perceptions_Survey_2012.pdf)

However, businesses have understandable concerns about some aspects of licensing, including: the number of different licences or registrations they are required to seek; the length of some of these licences and the frequency or basis on which they have to be renewed; the ease with which they are able to apply for and pay for licences, and the level of licence fees; and the approach that councils take to overseeing licensed businesses.

We recognise that local variations in the application of licensing frameworks are also a concern for businesses that operate across different council areas. But we believe there is a strong case for such variations, so that licensing decisions are rooted in local circumstance and need. We also believe that local variations can often help support smaller, more local businesses (with localised street trading schemes providing a good example of this).

Our reform proposals try to take account of this challenge and guard against inconsistency however, by recommending a clear national framework in which to make local decisions and calling for greater flexibility on the administrative issues that can cause most difficulty for national businesses.

➤ There is mutual recognition that badly designed licensing requirements do not work for either businesses or the councils having to enforce them and can divert the resources of both into unnecessary bureaucracy. This could be addressed through licensing reform.

## Current costs of the system

It is difficult to establish the overall cost of council operated licensing frameworks across England. For councils, these costs include the costs of running licensing frameworks; for business, licensing costs include licensing fees and the time required to apply for and comply with licensing requirements.

Licensing fees are intended to be set on a cost recovery basis, so councils should in principle be able to recover the costs of running the licensing system. In practice, the fact that our biggest licensing system – the Licensing Act 2003 – has fees that are still set nationally means that there is often a shortfall in the funds that are recovered, creating a council subsidy of licensed industries.

The Government's independent review of licensing fees, chaired by Lord Elton, found that between 2004/05 and 2009/10 there was an estimated deficit of around £100 million, equating to just under £17 million a year.

It is much harder to identify the total costs of licensing on businesses. Expenditure figures for 2012/3 show that councils received £152 million income from businesses for licence fees on alcohol, entertainment and taxis.

## THERE IS A COMPELLING CASE FOR A PROGRAMME OF LICENSING REFORM

However, although there is an array of survey data on business perceptions of regulation – for example, the proportion of businesses agreeing that issues such as completing paperwork and forms ( 60 percent ) and providing the same information more than once (66 percent) are a burden<sup>4</sup> – we are not aware of any previous attempt to quantify the cost to businesses in terms of the loss of productive time from complying with licensing requirements specifically.

We have been told that some large businesses have to employ a dedicated person to keep track of the different renewal dates that their licences require. This is costly and burdensome for businesses, detracting from their core focus of growing their business and serving their customers and potentially has a knock on effect for the public purse, in terms of lower business rate growth and taxable revenue.

If the cost impact of fragmented licensing controls, unnecessary bureaucracy and related regulation were equal to just 0.1 per cent of annual turnover in the hospitality sector (an industry subject to a significant proportion of licensing controls and equal to £90 billion), this would equate to £90 million, offering scope for potential savings if these issues could be addressed through licensing reform.

› We believe there is a solid business and economic case for licensing reform. It is unlikely to be the case that licensing reform will generate significant efficiency savings for the public purse, since licensing fees are set on a cost recovery basis, and most council licensing functions are already small. However, licensing reform provides an opportunity to free up council officer time to focus on better targeted, risk based activity rather than administrative processes and to free up business time to focus on running and growing successful businesses.

**In summary, we believe there is a compelling case for a programme of licensing reform that develops a consolidated, modernised legislative platform grounded in modern patterns of consumer behaviour, business practice and council responsibilities.**

<sup>4</sup> [http://www.nao.org.uk/wp-content/uploads/2012/06/Business\\_Perceptions\\_Survey\\_2012.pdf](http://www.nao.org.uk/wp-content/uploads/2012/06/Business_Perceptions_Survey_2012.pdf)



# WHAT SHOULD A REFORMED LICENSING FRAMEWORK LOOK LIKE?

If we were to design a new licensing framework, covering all licensable activities, we would not create the complex mass of legislation and rules we have now. In line with our Rewiring Public Services proposals, the LGA believes that government must be bold and ambitious in redesigning public services. This means taking the brave approach to start from scratch, building in elements of the current system that work well but removing those elements that are obsolete, inefficient or contradictory.

We set out below an overview of our vision for a reformed licensing framework and some of the issues to be considered in designing it. The following section outlines the steps we believe are necessary to achieve it.

## Clarity of purpose

At the beginning of this report, we stated that licensing is not an end in itself. It exists to mitigate the risks of unfettered access to certain types of goods or activity; its primary purpose is to prevent the harm or detriment that could arise from them<sup>5</sup>. Licensing decisions are therefore essentially judgements of risk and licensing frameworks and requirements must be proportionate to the risk in question.

A risk based judgement must at the outset consider the acceptable level of personal responsibility within the framework. There is a balance to be struck between an individual's responsibility for regulating their own behaviour and the state's responsibility for ensuring that those who cannot responsibly regulate their own behaviour are largely prevented from causing harm to others, as well as themselves.

<sup>5</sup> Other benefits, such as the perceived validation from holding a licence, although welcome, are secondary to this key purpose.

An important issue in reforming licensing is to consider whether a risk (or the effects of the risk coming to pass) can be offset without the need for a licence. For example, if the risk of an activity is, say, littering (which might occur as a result of leafleting) and there are already powers to address littering offences, does issuing a licence for the activity add any extra value? Does the licence in itself act as a deterrent to the problem it is seeking to prevent?

A related issue is the question of the process followed in order to grant a licence. A recent government consultation noted that 'there is a reasonable expectation that a licence issued by a public body to do something... will only be granted to a person competent to do that thing or run that business<sup>6</sup>.' We share this view of public expectations. Clearly, any check or oversight should be risk based and may be minimal for some businesses, but if no such oversight is built into the issue or maintenance of the licence, it is questionable whether there should be one in the first place.

These are key issues, because it is important that all stakeholders – businesses, councils, consumers, communities – understand the basis for licensing, what licensing exists to do, and what licensing fees pay for. In redesigning a licence framework, therefore, a starting point must be to consider:

- the risks that are being managed
- whether risk or impact can be mitigated or offset other than through a licence
- the additional checks or oversight provided through the award of a licence.

<sup>6</sup> Department for Communities and Local Government (DCLG) Park Homes discussion paper, 'Site licensing: changing the licence holder' (November 2013)



## Determination of licensable activities

Clarifying and agreeing the purpose of licensing provides a basis for determining goods or activities to be licenced in a reformed framework.

A reformed licensing framework would also need to be 'future proofed' and incorporate a mechanism for adapting to emerging risks and changing patterns of behaviour. This would mean activities that do not currently require a licence (or may not even exist yet) could be incorporated into the licensing framework as the need arises; or, equally, removed if habits change.

As examples of this, over the past three decades we have seen significant shifts in society's attitude to, say, wearing seatbelts or our expectation about where people should be able to smoke. It is unthinkable to many that people would once have been able to smoke in an office, on a train or even, more recently, in pubs. As behavioural norms change, it may be possible to reduce the need for licensing of certain activities, and the licensing framework should be able to accommodate this.

## A new framework

We are calling for a clear, consistent framework governing licensed activities. We believe the 2003 Licensing Act provides a useful model in terms of providing a national framework that is managed and applied locally. We would also incorporate additional elements of local flexibility enabling individual councils to license activities that pose a particular risk in their areas.

The framework should incorporate the following principles:


### **Local flexibility, democratic accountability and transparency**

Local democratic accountability must be at the heart of a new licensing framework. As stated, we understand the value placed by businesses on standardisation and national consistency. We believe that this can be provided through the development of a consistent national framework for licensing.

But the framework must continue to operate and licensing decisions must still be taken at a local level by councillors who are closely connected to their local neighbourhoods, who are trusted by them to reach the right decisions about their communities and who can be held to account by them.

We believe that there are a number of activities (notably the sale of alcohol) that are recognisably of such importance that they should be automatically subject to licensing controls. But we believe there are others, as now, where individual councils will reach their own decisions about whether a licence is a necessary requirement in their area.

A reformed licensing framework should retain the flexibility for councils to be able to respond to complaints or local risks and bring activities into the licensing framework if the evidence suggests that is the right approach for their area. Equally, there may be times when the evidence indicates that it would be appropriate to remove activities from a local licensing framework.



## LICENCES SHOULD REFLECT THE WAY THAT BUSINESSES OPERATE, NOT HOW GOVERNMENTS HAVE INTRODUCED ACTS OF PARLIAMENT

Local government is the most open and transparent part of the public sector and we recognise that selective licensing needs to be done with the consent of residents and input of businesses. Parliament has recognised that councils already have considerable experience of conducting open enquiries into complex issues, most recently by giving them the power to introduce late-night levies, early morning restriction orders and cumulative impact zones.

This openness and responsiveness is maintained both through the ballot box and the regular scrutiny investigations that councils conduct into topics of local importance. The measures we propose will simply extend and apply these principles to other issues of local concern.

These in-built safeguards are supplemented by the right of appeal to the magistrate's court or, in some cases, to judicial review or the Local Government Ombudsman. The right to appeal should be embedded in a proportionate way to the new licensing framework, and we believe there could be consideration of whether the Magistrate's Court remains the appropriate route.

We believe that on matters of process, businesses should be encouraged to refer issues to the Local Government Ombudsman in the same way that residents do. Our work has revealed a lack of awareness of this option and work is needed by both councils and the Local Government Ombudsman to address this.

### **Licensing objectives**

We propose that all local licensing decisions should be reached with regard to a common set of nationally set licensing objectives, reflecting that licensing exists for the common purpose of mitigating risk and preventing harm from occurring.

However we believe that the licensing objectives must be expanded to reflect the full range of council responsibilities. This would enable councillors to reach licensing decisions that balance the existing licensing objectives and goal of economic growth with an objective reflecting councils' public health responsibilities. We also believe that the concept of cumulative impact could be a consideration in relation to all licensing issues, not just alcohol.

We also need a further debate about how planning and licensing operate alongside each other through planning use classes that provide effective economic regulation and licensing objectives that enable councils to manage the social and public protection impacts of certain types of economic activity.

### **A single licence per business**

Licences should reflect the way that businesses operate, not how Acts of Parliament have been introduced by multiple government departments over the years. It is inefficient and unwieldy for a business to have to seek multiple licences or permissions from the same organisation; businesses should be able to go through a single application process leading to the award of a single licence tailored to their business needs.



Our proposal is that businesses applying to local councils for licences should be able to specify as part of the application process what their licence should cover, for example food registration, a premises licence and the permission to have tables and chairs on the pavement.

Providing that an application meets the relevant information requirements, a licence should subsequently be awarded in respect of all of these activities. The licence fee payable would be determined by the relevant activities covered by the licence; all licence fees should be based on local cost recovery and be fully transparent.

This may require different ways of working in councils and particularly in two tier areas where relevant functions may occasionally be split across different authorities. It implies closer coordination between different teams and potentially a single point of contact to liaise on combined licence applications. But we believe it is a realistic ambition for councils and businesses. A longer term, if more challenging objective, would be to join up applications for licences and permits from different parts of the public sector.

### **A licence for life**

An effective licensing system must be able to address issues of non-compliance, with the ultimate sanction being the withdrawal of a licence. If these powers are in place, there is no obvious need for licences to be subject to full renewal processes: responsible operators should be able to operate in the certainty that a licence will be maintained without the need for repeated applications over time.

This reflects the fact that the vast, vast majority of businesses do not set out to breach relevant requirements or break the law.

While recognising the arguments against, we are on balance supportive of the principle of a licence for life for business licence holders, with clear and enforceable measures for withdrawing a licence if it becomes necessary, as embodied in the 2003 Act's approach to personal licences or in driving licences.

A simple annual update process would enable councils to confirm existing licence details and seek a fee for the maintenance of the licence, which would fund compliance activity. Proposals to implement the concept of mutual recognition of licences across the UK will need to be considered as part of this reform.

### **A simple administrative approach**

In addition to a simple annual confirmation of details, we believe that there is more that can be done to simplify the administration of licences, in line with the 2006 EU Services Directive. For example, businesses should always be able to apply and pay for licences online. They should also have the same flexibility that council taxpayers already have, in terms of flexibility over payment dates, payment by instalments, direct debit, etc.

# NEXT STEPS TO DELIVERING LICENSING REFORM

We have identified a range of opportunities for licensing reform through our survey of councils and engagement with business stakeholders. These fall into three broad categories:

- changes that councils can and are implementing now
- government work to identify legislative changes
- actions that require further development and research.

## Councils

Councils are keen to make what changes they can and a number have already sought to improve licensing, within the constraints of the existing framework. Several of the Better Business 4 All areas, supported by the Better Regulation Delivery Office, are exploring this issue and the LGA has identified a number of additional councils who wish to explore licensing issues specifically. This work will continue to shine a light on new and improved ways of working.

### Councils can:

- Continue thinking about how different services can join up (eg, licensing and planning; licensing and environmental health) and coordinate engagement with the businesses they work with to design services around the customer. This includes routinely sharing information that is relevant to them and referring or signposting a business or individual to another council team.
- Make progress on simplifying the administrative elements of licensing. Residents have considerable


choice and flexibility when making payments to a council, including choosing the date of payment and selecting the method of payment; they are also typically notified when payments are due. Businesses should have access to these same flexibilities, recognising that cash flow is critical to small businesses and that larger businesses may have multiple premises to cover and payments to make.

- Improve and enhance their communications with businesses, particularly online, which many businesses will rely on as a primary source of information. Businesses need to be able to access relevant information if they are to comply with the law; in line with the Regulators' Code, councils should make this as easy as possible.

## Government

Councils can only go so far before they come up against inflexibilities, barriers and restrictions in national legislation. Some of this is easily addressed, such as the removal of the prescribed forms for alcohol licensing, but much will require greater work and resources from government if we are to achieve meaningful change rather than just tinker around the edges.

The government should initiate an overhaul of existing licensing legislation and related legislation as it pertains to licensing. A review should assess licences against the principles set out in this document and then assess what amendments are needed to bring each licence into a consistent framework.



This is comparable to the recent powers of entry review coordinated by the Home Office, where each department has assessed the powers for which it is responsible against criteria developed by the Home Office.

**Government should:**

- Establish a licensing reform working group made up of consumer, business, council and government representatives to oversee the development and implementation of licensing reform. This approach could be mirrored locally, to ensure local licensing regimes are administered through a genuine partnership approach.
- Establish a clear picture of the breadth of licensing legislation, including permitting and registration systems and frameworks that exist through locally adopted Acts.
- Review the legislation to identify anomalies and establish what should be scrapped or reformed and consolidated. If it is determined that certain licences continue to require a standalone approach, government should consider ways it can standardise the underpinning principles. A draft list of core pieces of legislation to be reviewed is in the Annex to this document.
- Review related legislation to consider the scope to remove barriers to coordinated working with other areas.

- Develop a new framework for licensing in line with the ideas put forward in this document in terms of: a broader set of core licensing objectives; local flexibility to shape licensing frameworks based on local need; licence length; the principle of a single licence per business.

There are already pieces of legislation to provide a sound basis for this work. We have spoken in support of the general design of the Licensing Act 2003, but we also have an established and robust piece of legislation in the Provision of Services Regulations 2009 which sets out accepted principles for when and how a licensing regime should be introduced. We believe this could form an effective basis for a consolidated national framework for licensing, including more effective delegation of place-shaping powers to councils.

The Local Authorities (Functions and responsibilities) (England) Regulations 2000 also provide a clear framework for putting transparency and accountability at the heart of licensing systems. However, while a sound starting point, these regulations also contain anomalies that will need to be addressed in the wider review before they can be included in a consolidated framework.



## Business

The role of business in regulation, for far too long, has been that of the person being 'done unto'. In fact, businesses are more likely to embed safe ways of working into daily practice if they feel able to ask for assured advice, and able to seek support that reflects their business needs. Over the past few years, councils have made significant strides towards creating this environment. Initiatives such as Better Business 4 All, the Focus on Enforcement reviews, and the work going on every day in councils contributes to this shift. But we need businesses to be active participants in this.

### **Businesses can:**

- Be prepared to provide direct feedback and, if necessary, challenge to officers and councillors where they encounter practices they believe are excessive and need improvement. For their part, councils should guarantee a fair hearing and a safe forum for doing so.
- Recognise that councils have wider responsibilities and duties than the promotion of economic growth, notably public health and wellbeing, and that these may sometimes need greater weight to be attached to them. Businesses are not being victimised where this is the case.
- Provide good quality information and applications. Submission of poor quality information is one of the main reasons for applications being returned, delayed or rejected. Taking the time at the outset to submit a quality application is in the interests of both businesses and councils and minimises costs for both parties.

## Local Government Association (LGA)

The LGA, as the voice and improvement arm of local government, has a key role in supporting this work, alongside the Better Regulation Executive and Better Regulation Delivery Office, as well as in making connections between various pieces of reform work.

### **The LGA will:**

- Provide training, advice and support to help councillors fulfil their leadership role in licensing, through our online councillor training module and regular workshops and events.
- Work with licensing officers to consider the training and development requirements to support licensing reform.
- Continue to support councils to explore how to improve coordinated working across licensing and related services to improve the support provided to businesses. In 2014, we will be providing grants to a small group of authorities to pilot different approaches to improving business support through regulatory services. The findings from these pilots will be shared across all councils.
- Promote a debate at national level about what is needed to ensure land use planning and local licensing systems operate effectively in providing economic regulation and managing social and public protection interests. Continue the development of best practice guidance on pre-application planning advice services, reflecting the desirability of involving related services such as licensing at an early stage.
- Assist and support government in progressing detailed licensing reform proposals.

# ANNEX 1:

## LICENSING

### 'SNAPSHOT'

The LGA surveyed 15 councils (comprising a mix of different sized unitary, district, metropolitan and borough councils) on a range of licences, permits and registrations issued by them over the past three years.

The survey found that the councils typically registered more food premises than any other type of licence or permit. However, this was closely followed by personal licences for the sale of alcohol and taxi and private hire vehicle licences. In some areas, but not all, one-off licences for charity street collections and temporary event notices could also be required in large numbers.

Many council systems did not enable them to state how many businesses held multiple licences for different activities, for example where a business is registered as a food business, but also holds a licence for the sale of alcohol.

However, there was a consensus that businesses in the hospitality sector, particularly pubs and restaurants, would hold the greatest number of licences, permits or registrations.

Councils were asked whether any existing licences provided a good model for licensing reform. There was a general consensus that the Licensing Act 2003 is, broadly, a good model for future licensing schemes, combining local flexibility and accountability with national consistency.

Councils were also asked which licences were the most difficult to administer. Taxi and private hire vehicle licences, and selective licensing for houses of multiple occupation, were most commonly identified.

Respondents were clear that the schemes were worthwhile and brought public benefit, but that the bureaucracy was disproportionate to the level of public benefit secured and could be simplified.

The financial implications of operating multiple licensing schemes were also considered. The responses illustrated the need for localised setting of fees to recover the costs of the licensing system.

While the majority of systems reviewed operated on this basis, it is ironic that the 'exemplar' system – the Licensing Act 2003 – does not do so. The snapshot revealed that the costs of the system varied from break even in two councils, to a deficit of around £2 million per annum in one council. The majority of councils reported deficits in the region of £40,000 - £50,000 per annum.

This financial discrepancy is exacerbated by responses showing that between one third to one half of premises with alcohol licences needed informal advice and guidance to comply with the law. These figures are higher than is suggested by the limited national figures available. Dealing with these queries can often be expensive and time consuming, although this can be offset against the disruption caused by formally prosecuting a business.

A further piece of work could explore whether the true cost of this support can be adequately recovered through the existing fee-setting arrangements, which often focus on a process-basis rather than a compliance-basis.



Respondents suggested a number of systems that could be reformed:

**Simplifying licences for business:** The locally established tables and chairs licences were felt to be ideal for incorporating into a premises licence, with the Highways Authority becoming a responsible authority. This would remove the need for the business to apply for a separate licence and align the renewal period with that of the longer licence.

**Strengthening oversight:** Several respondents felt that inspection of food premises should take place before the business started trading, a view supported by the recent Which? report 'Ensuring consumer-focused food law enforcement'. There was also a view that hairdressers, tattooists and related professions were subject to varying degrees of professional checks and that controls could be strengthened.

**Increasing local flexibility:** One respondent noted that under the 1964 licensing regime the Magistrate's Court granted Special Orders of Exemptions for Bank Holidays and special occasions such as the World Cup. These exemptions are now sought on a national basis from the Home Office. This power could be given to councils and would create greater flexibility for local businesses that had proven themselves to be responsible operators; as well as addressing a number of comments received about the burden, and lack of resident input, relating to temporary event notices.

**Diversifying enforcement options:** Councils are increasingly making use of informal advice and support options, as shown above, but they lack a similarly flexible approach to enforcement. Formal prosecution can be the first method available under some schemes. Respondents suggested that fixed notice penalties would be a quicker and more effective way of taking action for both the council and business concerned. Food and street trading offences were felt to be particularly suited to this approach.

**Increasing consistency:** The LGA has been approached by the All Party Parliamentary Group on Skin who, supported by several councils, are proposing a licensing scheme for sun-beds. A similar scheme is in operation in Wales. The Local Government Miscellaneous Provisions Act (1982) introduces the option for councils to locally license massage and special treatment facilities, tattooists and similar activities. However, sun-beds were not included as the technology had not then been developed. A more flexible system of localised licensing would allow these developments to be incorporated without using parliamentary time.

## ANNEX 2:

# SELECTED LIST OF LOCAL AUTHORITY LICENCES, PERMITS, CONSENTS AND REGISTRATIONS

Animal boarding establishment licence	Animal Boarding Establishments Act 1963
Pet shop licence	Pet Animals Act 1951
Scrap metal dealer licence	Scrap Metal Dealers' Act 2013
Auction premises registration	Greater London Council (general Powers) Act 1984 Part VI
Occupation of the road in connection with building work	Highways Act 1980
Sex shop and cinema licence	Local Government (Miscellaneous Provisions) Act 1982
Massage and special treatment premises licensing	Byelaw under Local Government (Miscellaneous Provisions) Act 1982
Food premises registration	EC Regulation 852/2004 (Food Premises)
Street trading licence	Local Government (Miscellaneous Provisions) Act 1982
Skip licence	Highways Act 1980, Section 139
Market stall licence	Local Government (Miscellaneous Provisions) Act 1982

Club licensing	Licensing Act 2003
Street collection licence	Police, Factories etc. (Miscellaneous Provisions) Act 1916
House to house collection licence	House to House Collection Act 1939 and the House to House Regulations 1947
Car boot sale authorisation	Local Government (Miscellaneous Provisions) Act 1982
Tattooists, piercing and electrolysis licence	Local Government (Miscellaneous Provisions) Act 1982
Second hand dealers	Local Acts apply
Hairdresser registration	Local Acts apply
Skip operator licence	Highways Act 1980, Section 139
Riding establishment licence	Riding Establishments Act 1964
Zoo licence	Zoo Licensing Act 1981
Cooling tower notification	Notification of Cooling Towers and Evaporative Condensers Regulations 1992

Pleasure boats	Public Health Acts Amendment Act 1907 Section 94	Camp site licence	Public Health Act 1936
Ability to place tables and chairs in the road	Highways Act 1980, Section 115B /115E	Hypnotism permit	Hypnotism Act 1952
Caravan and camping site licence	Caravan Sites and Control of Development Act 1960	Environmental permitting	Environmental Permitting (England and Wales) Regulations, 2007
Application to use street or pavement space for displays	Highways Act 1980, Section 115B /115E	Safety certificates for regulated stands at sports grounds	Part III of the Fire Safety and Safety of Places of Sport Act 1987 (c.27)
Busking licence	London Local Authorities Act 2000	Food premises approval	Food Hygiene (Wales) Regulations 2006 / Regulation (EC) No 853/2004
Petroleum storage licence	Petroleum (Consolidation) Act 1928 as amended	Massage and special treatment, therapist registration	Byelaw under Local Government (Miscellaneous Provisions) Act 1982
Safety certificates for sports grounds	Safety of Sports Grounds Act 1975 (c. 52)	Approval of premises for civil marriage and civil partnership	Marriage Act 1994
Weighbridge operator certificate	Weights and Measures Act 1985	Consents for leaflet distribution	Clean Neighbourhood and Environment Act 2005
Premises licence	Licensing Act 2003	Licenses and consents for structures over, along and under the highway	Highways Act 1980, Sections 176-180
House in multiple occupation licence	Housing Act 2004		
Temporary event notice	Licensing Act 2003		
Performing animals registration	Performing Animals (Regulation) Act 1925		

## **Local Government Association**

Local Government House  
Smith Square  
London SW1P 3HZ

Telephone 020 7664 3000  
Fax 020 7664 3030  
Email [info@local.gov.uk](mailto:info@local.gov.uk)  
[www.local.gov.uk](http://www.local.gov.uk)

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L14-40

**Licensing Committee**  
**10<sup>th</sup> April 2014**

**Submitted by:**           **Head of Business Improvement and Partnerships**

**Purpose**

To advise the Committee of the consultation process in relation to the attached draft policy in relation to Sex Establishments

**Recommendation**

**That the existing policy be reviewed and following the results of the consultation exercise be recommended to the Council for adoption.**

1.       **Background**

1.1 Members may recall that on the 23<sup>rd</sup> February 2011 following a consultation exercise Full Council approved the adoption of the attached Sex Establishment Policy.

2.       **Issues**

2.1 The Period of Licensing Policy was stated to be for three years from the 23<sup>rd</sup> February 2011. It has therefore been three years since the policy was formulated and consultation undertaken.

2.2 The Policy should therefore be sent out for consultation.

2.3 It is considered by the Councils legal and licensing departments that the existing policy meets the needs of the current licensing regime and that no additions, amendments or deletions are required.

3.       **Proposal**

3.1 That the Committee consider the draft policy and make any necessary amendments.

3.2 That following consultation a draft policy relating to the licensing of Sex Establishments will be presented to a future meeting of Full Council with recommendations for adoption.

5.       **Reasons for the Proposal**

To continue the review of the Council's policies and procedures and to ensure the continued safety and protection of the residents of the Borough and its visitors.

6.       **Crime and Disorder**

Reducing the incidence of crime to vulnerable groups and reducing the fear of crime.

7.       **Human Rights**

Article 6(1) guarantees an applicant a fair hearing.  
Article 14 guarantees no discrimination.

8. Equality Impact Assessment

No issues have been identified.

9. Major Risks

None.

10. Key Decision Information

11. Earlier Cabinet/Committee Resolutions

Full Council 23/2/11