

Licensing Committee (Licensing Act 2003 Functions)

Agenda Item 22

Brighton & Hove City Council

Subject:	Licensing Act 2003 Enforcement		
Date of Meeting:	27 November 2008		
Report of:	Assistant Director Public Safety		
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Wards Affected:	All		

FOR GENERAL RELEASE

1. SUMMARY AND POLICY CONTEXT:

- 1.1 A letter has been received from Gerry Sutcliffe, Minister for Sport, Department for Culture, Media and Sport (DCMS) regarding Licensing Act 2003 Enforcement.

2. RECOMMENDATIONS:

- 2.1 That the Licensing Committee and the sub-committee notes and has regard to the approach set out in the Home Office and DCMS document entitled "Problem Premises on Probation" and annexe A, possible tough conditions to be assembled in packages.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

- 3.1 A letter dated 19 September 2008 was received from Gerry Sutcliffe, Minister for Sport regarding the Government's evaluation of the impact of the Licensing Act 2003 and the enforcement of powers under that Act along with a Ministerial written statement dated 4 March 2008 on that subject and a Home Office paper entitled "Problem Premises on Probation" – Red and Yellow Cards: How it would work."
- 3.2 The Ministerial written statement and Home Office paper recommend an enforcement regime for tackling problem licensed premises.

4. CONSULTATION

- 4.1 Consultation has been undertaken with the Licensing Strategy Group which includes members, officers, responsible authorities, the licensed trade and residents associations.

5. FINANCIAL & OTHER IMPLICATIONS:

5.1 Financial Implications:

The Licensing Act 2003 provides for fees to be payable to the licensing authority in respect of the discharge of their functions. The fee levels are set centrally at a level to allow licensing authorities to fully recover the costs of administration, inspection and enforcement of the regime.

Finance Officer Consulted: Karen Brookshaw

Date: 23.09.08

5.2 Legal Implications:

The licensing authority must have regard to the guidance issued by the Secretary of State in carrying out its functions.

The licensing regime imposes general duties on licensing authorities:

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

Lawyer Consulted: Rebecca Sidell

Date: 23.09.08

5.3 Equalities Implications:

Diversity is valued and strong, safe communities are vital to future prosperity. Licensing policy aims to protect children from harm including sale and supply of alcohol to children.

5.4 Sustainability Implications:

Licensing policy aims to prevent public nuisance and develop culture of live music, dancing and theatre.

5.5 Crime & Disorder Implications:

Licensing policy aims to prevent crime and disorder and protect public safety. Council enforcement policy supports fair, consistent, transparent, proportional enforcement.

5.6 Risk and Opportunity Management Implications:

Licensing is a crucial business and employment opportunity and unnecessary regulation might lead to legal challenge.

5.7 Corporate / Citywide Implications:

The success of the city's tourism strategy requires a safe, attractive city centre to improve competitiveness. The Act may significantly change night time economy

SUPPORTING DOCUMENTATION

Appendices:

1. Appendix A – DCMS letter from Gerry Sutcliffe, Minister for Sport, dated 19 September 2008
2. Appendix B – Ministerial Written Statement dated 4 March 2008
3. Appendix C – Home Office paper ““Problem Premises on Probation” – Red and Yellow Cards: How it would work.”

Documents in Members’ Rooms

1. Environmental Health & Licensing Service, Brighton & Hove City Council (2008): The Licensing Act 2003 – Brighton & Hove City Council: Statement of Licensing Policy

Background Documents

1. As Appendices above.

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19 September 2008



Dear Chief Executive

LICENSING ACT 2003 ENFORCEMENT

As you may be aware, the Government's evaluation of the impact of the Licensing Act 2003 in March found that, while the Act was generally working well, the powers available under the Act were not being consistently well used across the country.

These findings were reinforced by the National Audit Office report *The Home Office: Reducing the risk of violent crime*, which looked at the effectiveness of violent crime reduction at a local level, including the approach taken in relation to alcohol related violence. It found that some areas were more effective than others at sharing good practice across partnerships and using the powers available under the Licensing Act alongside other interventions. It recommended that the government should raise awareness amongst partnerships and the police about how the Licensing Act can be used to reduce alcohol related violence and to ensure that all areas are using the Act to its maximum potential to reduce the risk of violent crime.

The Secretary of State for Culture, Media and Sport therefore announced a number of measures to help enforcement authorities, such as the police, trading standards and environmental health officers, take a proactive approach to identifying and seeking reviews of problem premises, and to encourage licensing authorities to consider where tougher conditions might be appropriate following a licence review. A copy of the Secretary of State's written statement to the House of Commons is enclosed for information.

...

A key part of the approach outlined by the Secretary of State was for authorities to use local intelligence and knowledge to identify problem premises and to seek licence reviews with the intention of applying tough conditions as a 'yellow card' with the threat of revocation at a further review (a 'red card') should they fail to improve. Further details are set out in the attached guidance.

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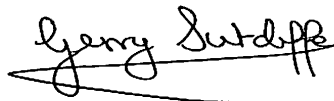


Department for Culture, Media and Sport

Some authorities already adopt a similar approach and the Home Office are organising a series of regional, practitioner focused workshops in November (to be run through Government Offices) on tackling problem premises through effective use of tools and powers, including the Licensing Act. Inevitably, different areas will need to adopt different approaches to reflect their own particular combination of issues in their area. We would like the regional events to identify some practical responses, including better partnership approaches such as sharing data about problem premises, enforcement of existing powers, test purchase campaigns and also the yellow/red card approach that can be tailored to individual areas. Invitations to the events should be issued shortly.

Both the Police observations as part of the campaign to tackle sales to drunks (last December) and the recent KPMG review of industry social responsible retail standards identified a number of premises which were not only breaking the law, but also represented high risks in relation to several of the licensing objectives (not just the prevention of crime and disorder). Some of those would appear to be exactly the kinds of premises where a yellow card backed up by tough conditions might be appropriate. In these circumstances, it is important that all responsible authorities are playing their part in using the 2003 Act to help promote the licensing objectives and to work in partnership to identify and tackle poorly run premises.

I should be grateful if you could share this letter and attachments with colleagues who are responsible for issues relating to the management of the night time economy and with local partnerships, such as your CDRP. I would, of course, be interested in hearing of any successful partnership approaches in your area and how the yellow/red card and tough conditions approaches might be implemented.

Yours


GERRY SUTCLIFFE

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www.culture.gov.uk

MINISTERIAL WRITTEN STATEMENT

Tuesday 04 March 2008

EVALUATION OF THE IMPACT OF THE LICENSING ACT 2003

LICENSING ACT 2003 AND TACKLING ALCOHOL-RELATED HARM

The Secretary of State for Culture, Media and Sport (Andy Burnham): I am today publishing the evidence gathered so far on the operation of the licensing laws introduced in England and Wales in November 2005, and setting out how we intend to monitor the licensing regime over the next few weeks and months, and the immediate action the Government is taking to tackle alcohol-related problems. Copies of the evaluation report are being placed in the Library of both Houses.

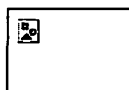
This first review of the Licensing Act reveals a **mixed picture**.

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

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

Some aspects of the Act have worked well.

Bringing together six previous licensing regimes into a single integrated scheme has resulted in a considerable reduction in red tape – estimated at £99m per annum – with benefits not just for business, but the third sector and non-profit making clubs too.



The Act has also delivered new powers and flexibilities enabling local authorities and police to work in partnership to significantly reduce crime and disorder in some areas.

At the same time, millions of people have been able to enjoy the convenience of shopping at a time that suits them and socialising in restaurants, bars and cafés beyond 11pm.

Furthermore, contrary to popular expectations:

- The average closing time across all on-licensed premises has increased by only 21 minutes since the Act came into effect;
- the overall volume of incidents of crime and disorder has remained stable and not risen; and
- alcohol consumption, rather than increasing, has instead fallen over this period.

In total, fewer than 4% of premises (some 5,100) have licences permitting them to open for up to 24 hours a day - many of which are hotels, stores and supermarkets. Only some 470 pubs, bars and nightclubs have 24 hour licences, but there is no evidence that more than a handful operate on that basis. The British Beer and Pub Association informed a Select Committee recently that there are only two traditional pubs in the entire country that operate for 24 hours.

But beneath these headline facts the picture is much more mixed.

Whilst crimes involving violence may have reduced over the evening and night time period, the evidence also points to increases in offences, including violent crimes, reported between 3am and 6am. This represents 4 per cent of night-time offences.

Similarly, whilst there is no clear picture of whether alcohol related demands on A&E services and alcohol-related admissions have risen, some hospitals have seen a fall in demand, others have reported an increase.

It is also clear that the overall reduction in alcohol-related disorder we wanted to see across the country has not materialised consistently in all areas.

The Government remains determined to address these issues, and the report published today has helped us identify a number of ways we can go further to protect the public, both in terms of using all the **flexibilities in the Act to crack down on irresponsible behaviour**, including more caution and conditions when issuing licenses and the withdrawal of licences in certain areas, but also introducing **new initiatives to tackle anti-social behaviour** associated with alcohol consumption.

The announcements today contain measures to target those businesses that continue to sell alcohol irresponsibly and cause harm within our communities.

To specifically address the small but unacceptable proportion of violent crimes occurring in the early hours of the morning, we will undertake further comprehensive **research into post-midnight drinking patterns and their impact on crime and order**, and will not hesitate to take the necessary action through new legislation and enforcement measures to tackle this.

But we will take immediate action now.

First, we will utilise existing **powers to identify problem premises**. We will make it easier to **review premises** where local intelligence suggests there is a problem.

Second, we will encourage the imposition of **tougher sanctions** on those found to be breaching their licensing conditions. This includes the stipulation that there be **far more instant closures** of pubs and clubs in an area where there has been a disorder and indefinite closure by the courts for any breach of licence conditions. We will develop a toolkit for local authorities and police, building on my Rt. Hon. Friend the Home Secretary's recently published Guide for Dealing with Alcohol Related Problems.

Third, we will change the offence of "**persistently selling alcohol to a person under 18**" from 'three strikes' to 'two strikes' in three months. This means that any seller who twice sells to under age drinkers and is caught doing so will immediately lose their licence.

Fourth, we will support the police and local authorities to **identify problem hotspots** by ranking geographical areas and concentrations of premises on the basis of the risks they present to crime and disorder, public nuisance and children. This will allow licensing authorities the ability to exercise **more caution and conditions when issuing licenses, and wholesale withdrawal of licences** in these areas, and permit local authorities and police to **target enforcement resources** more effectively at problem hotspots.

Finally, the message must be clear to all: breach your licensing conditions and you face severe and costly restrictions on your business – with a new "**yellow card and red card**" alert system. A yellow card will put the problem premises on immediate probation together with tough and uncompromising sanctions. And when the circumstances are right, it will be a straight red card leading to withdrawal of the licence.

To tackle wider anti-social behaviour associated with alcohol consumption my Rt Hon Friend, the Home Secretary, will bring forward legislation to:

- **Increase the maximum fine for anyone not obeying an instruction to stop drinking**, or to give up their drink in a designated public place from £500 to £2,500;
- **Make it easier for the police to disperse anti-social drinkers** – both adults and children – from any location – if necessary, we will change the law to make this happen;
- **Extend the use of Acceptable Behaviour Contracts** for young people caught drinking in public, to require them and their parents to attend a session with a trained worker; and
- In addition, we will be extending the **alcohol arrest referral pilots** that my Rt Hon Friend, the Home Secretary, announced last month so that under 18s may also benefit from a brief intervention from a trained worker. This will help deal with young people drinking in public who are already involved in criminal activities.

I, together with my Rt Hon Friend, the Home Secretary, will convene a **summit of police and local authorities** to explore how we can take these proposals forward.

The report published today is not the end of the story. The measures announced today are only part of the Government's comprehensive strategy for combating the problems associated with alcohol.

A significant programme of work is underway over the next 6 months.

We are working with the industry on alcohol advertising, and welcome industry consideration to give much more prominence to **clear information about the dangers of alcohol**, and to actively support Government campaigns to promote sensible drinking. We will strongly encourage them to press on with trials to test their effectiveness. If we need to, we will consider more restrictions.

Later in the year, my Rt. Hon. Friend, the Secretary of State for Children, Schools and Families will publish the Government's action plan on young people and alcohol containing further proposals for reducing drinking by young people specifically.

Later in the spring, my Rt. Hon. Friend, the Secretary of State for Transport, will also set out measures for dealing with the relatively small number of people who continue to think it is acceptable behaviour to **drink and drive**.

The Department of Health will publish the results of the independent study commissioned from the University of Sheffield to look at the evidence on the relation between **alcohol price, promotion and harm** and in response will bring forward necessary action. The real cost of alcohol has fallen to historically low levels, and there is already an emerging consensus that more needs to be done to tackle **irresponsible promotions and deep discounting** that can lead to anti social behaviour. The Government will begin immediate work with the licensing authorities and retailers, including the development of new codes on **responsible sales and promotions** which might be considered as a condition of an alcohol licence.

In conclusion, we are prepared to take action wherever the evidence suggests that it is necessary to tackle the problems associated with alcohol.



**“PROBLEM PREMISES ON PROBATION” – RED AND YELLOW CARDS :
HOW IT WOULD WORK**

The problem

1. In many cases, revocation of a premises licences effectively kills any business which is focused on retailing alcohol. This means that the not only the business owner suffers, but most people working there will lose their livelihoods. Many of these workers will be entirely innocent of any wrongdoing. There is also an impact on those who rely indirectly on income from the premises - such as local food suppliers or cleaning contractors, and the closure of a premises can deprive some communities of their local shop or restrict local consumer choice. Enforcement agencies that apply for reviews and local councillors sitting on licensing committees are well aware of this potential impact and it can lead to a reluctance to use the powers in the Act to revoke the licence instantly for any failure to promote the licensing objectives. This risks patchy enforcement and uneven solutions to alcohol-related problems around the country.
2. In addition, in many cases, enforcement agencies will prefer to negotiate additional voluntary conditions with problem premises against the threat of review as an immediate, pragmatic and less bureaucratic solution. While this may be a reasonable approach in many cases, there is a risk that some premises are not being dealt with as firmly as necessary, particularly given the level of test purchase failures. Nor are voluntary agreements particularly visible, lessening the deterrent effect on other premises.
3. Government wishes to support the enforcement agencies and licensing authorities by providing clear guidance on a “yellow card / red card” system, which would ensure a firm response to problems, but which give premises an opportunity to reform. The intention is that such a system would be highly visible and send a clear message to alcohol retailers, and the public, that action will be taken against those who act contrary to the licensing objectives and the law.
4. The proposed interventions below would not prevent the giving of an instant red card in an appropriately serious case. It should be realised that a

"test purchase" failure often masks multiple offences that have gone undetected.

Supporting enforcement agencies

5. The Government will encourage enforcement agencies – mainly the police, trading standards officers and environmental health officers – to seek more reviews in the knowledge of the yellow card/red card system described below. This will mean not giving informal warnings. It will mean that on identifying problem premises, the licensing authority will be engaged faster than it might have been in the past.

6. Enforcement agencies would be encouraged to seek reviews when local intelligence suggests that individual premises are selling to children or causing other crime problems or causing noise nuisance.

7. Under the law, the licensing authority must then hold a hearing so long as the application relates to one of the four licensing objectives and is made by a responsible authority or by an interested party like a local resident or another local business.

First intervention

8. Responsible authorities will be encouraged to propose a package of tough new conditions to be added to the existing conditions which are designed to combat the identified problem. The kinds of conditions that we have in mind are set out in Annex A. These would not be appropriate for every premises and need to be tailored to the nature of the problem and the type of premises. Such action should be supplemented where appropriate by:

- Removal of the designated premises supervisor and his/her replacement (the manager is removed);
- Suspension of the licence for between 1 day and 3 months according to the circumstances.
- Restriction on trading hours – cutting hours of trading in alcohol.
- Clear warning that a further appearance will give rise to a presumption of revocation.

9. If appropriate following review, the licensing authority should consider these packages of conditions and actions to challenge problem premises more aggressively.

10. For example, requiring a major supermarket to make all alcohol sales through a single till manned by a person aged 25 years or older in order to tackle sales to underage. Over a year, this would potentially cost such a supermarket £millions. It would also make them reflect on their levels of

supervision at other stores.

11. In addition, enforcement agencies should make the premises in question a priority for test purchases and more regular inspections.

12. The aim would be to put the premises on probation. Effectively, they are given a yellow card. They are put on notice that the next offence or breach would mean an automatic second intervention – a red card.

Second intervention

13. In the absence of improvement, enforcement agencies should seek another review. The licensing authority again must grant a hearing.

14. If satisfied on the issue of the lack of improvement, the licensing authority should look to **revoke the licence**. The action should be publicised in the area as an example to other retailers.

Implementation

15. Requires:

- Development with the Home Office of a toolkit and guidance for police, trading standards and ethos;
- Initial letters to Leaders of local authorities and Chief Executives;
- Ultimately, stronger statutory Guidance to be laid in Parliament for licensing authorities themselves.

16. Central Government cannot tell licensing authorities what to do. The review powers are devolved to them. Similarly, central Government cannot direct enforcement agencies how to enforce the law. It would remain their judgement when and how to act.

ANNEX A: POSSIBLE TOUGH CONDITIONS TO BE ASSEMBLED INTO PACKAGES

n.b. These would not be appropriate for every premises and need to be tailored to the nature of the problem and the type of premises.

GREATER CONTROL OVER SALE

1. Designated checkout(s) for alcohol sales (supermarket). Impact on protection of children from harm, but also impact on sales and goodwill (probable loss of trade to competitors).
2. Personal licence holder/DPS to be on site at all times during sales of alcohol. Impact on protection of children from harm and new costs if additional staff have to qualify as personal licence holder.
3. Personal licence holder/DPS to supervise and authorise every individual sale of alcohol. Impact on protection of children from harm and new costs if additional staff have to qualify as personal licence holder.
4. SIA registered security staff to be present at points of sales to support staff refusing sales to u-18s and drunks.
5. Alcohol sales only to be made only by person aged not less than 25 years. Impact on protection of children from harm, but also impact on sales and goodwill (probable loss of trade to competitors).
6. CCTV installed at all points of sale and recorded. Recordings can be examined by a constable or trading standards officer to determine sales to minors or drunks

TRAINING

7. All staff to read and sign a declaration that they understand the law every time they start a shift.
8. Train all staff engaged in selling alcohol in alcohol awareness (not just personal licence holders). All new staff to be trained within two weeks of commencing employment. Evidence of training to be retained in writing and to be available for inspection by any authorised person and training standards officers. Impact on all licensing objectives.

ALCOHOL SALE BANNED AT CERTAIN HOURS

9. No alcohol sales Mon – Fri between 4pm and 8.30pm. Impact on protection of children from harm or targeted hours reflecting times when local intelligence indicates under 18s may be purchasing alcohol.

10. No alcohol sales --- Friday to Sunday. Impact on all four licensing objectives.

ALCOHOL DISPLAYS

11. No displays of alcohol or advertising of alcohol promotions that can be seen from outside the premises.

12. No alcohol stocks promoted alongside goods likely to appeal to children (eg. confectionary, toys).

CUTTING DOWN ON SHOPLIFTING

13. SIA registered security staff to be present at alcohol aisles during opening times to prevent attempted under age sales or theft.

14. Location of alcohol stocks/displays not to be sited near the entrance/exit to deter shoplifting.

15. No direct public access to alcohol products – like tobacco, alcohol to be kept behind a dedicated kiosk.

NAMING AND SHAMING

16. Display an external sign/yellow card to state which of the licensing act objectives they have breached and what action has been taken against them.

OTHERS

17. Maintain a log of all under attempted purchases from those who appear to be under 18 or drunk.

18. Children aged under [18 years] not to be present or (not more than one child at any one time) on premises (other than children living on the premises or of the people working on the premises); or only children under 18 accompanied by an adult to be permitted on the premises during retailing hours. Impact on protection of children from harm.

19. Products to be labelled (a label stuck to the bottle or can) to show the details of the shop from which it was bought. Purpose would be to provide evidence of unlawful sales if product found commonly in possession of persons under 18.

20. Designated single items --- beer, alcopops and cider ---- not to be sold to any person. Impact on protection of children from harm. Purpose would be to reduce sales to children and drunks. Alternative would be to prescribe sales of beer, alcopops and cider in quantities of less than four.

21. CCTV installed, monitored and 24 hour recordings kept for a week and made available to constables and persons authorised under the 2003 Act to help identify attempted proxy purchasing.