



# Open All Hours?

**Institute**  
of Alcohol Studies

A network of civic societies and residents groups urging licensing and other reforms which seek to ensure a better balance between alcohol consumption and the quality of life in our cities, towns and villages.

**Chairman: Matthew Bennett**

Please reply to:  
Matthew Bennett  
19 Denman Street  
London W1D 7HP

## **REBALANCING THE LICENSING ACT**

We welcome this consultation. We believe it is long overdue because the 2003 Licensing Act did not deliver the benefits its proponents suggested. In contrast it has introduced a sharp deterioration in the quality of life for residents who live in city and town centres and others who live alongside licensed premises. The Act and its accompanying guidance were heavily biased in favour of increased opening hours and limited controls. We particularly welcome the emphasis now on putting local communities at the heart of decisions in relation to the Licensing Act and feel that our responses will help further to achieve this.

OAH? Is an informal network of residents groups who came together in 2001 at the production of the original bill to try and press for greater protection for local people and their communities. It is made up of members who represent residents in Norwich, Bury St Edmunds, Colchester, Worthing, Bedford, Brighton, Bath, Sefton, Tewksbury, Bristol, Leeds, Horsham, Shrewsbury and the London boroughs of Camden, Ealing, Richmond and Westminster. It has a representative from the Network of Residents Associations (NORA), the West End of London Community Network (WECN) and the Licensing Act Active Residents Network (LAARN). It has been given practical support since its inception by the Civic Trust (now Civic Voice) and the Institute of Alcohol Studies (IAS) but has always been independent from both.

The consultation is entitled 'Rebalancing the Licensing Act' and the ministerial introduction says the rebalancing is to be 'in favour of local communities' and 'to put local communities in the lead'. For local communities the licensing objective of preventing public nuisance is at least as important as that of preventing crime and disorder and yet surprisingly public nuisance is not specifically addressed in this consultation. Many licensed premises operate without a significant crime impact but can have a huge impact on the local community in terms of noise, litter, traffic generation etc. Yet this consultation fails to address and propose better remedies for these types of problem. The Government should respond to this failure and propose better remedies for these types of problem. The Government should respond to this failure and bring forward proposals to better control public nuisance.

Much of the way the Licensing Act 2003 has been interpreted has been by virtue of the ministerial guidance that accompanies it. Whilst we welcome the proposed legislative changes to the Act, these will take time. If the ministerial guidance were immediately reviewed and re-written, subject to public consultation, many of the concerns addressed

in this consultation could be dealt with by providing more balanced guidance to licensing authorities to support them in getting to grips with the adverse impacts of licensing as soon as possible. We therefore believe that the guidance should be reviewed as a matter of urgency.

Our response to the consultation questions:

1. OAH? fully supports the Government's intention to designate local licensing authorities as responsible authorities. We believe that this should save time and bureaucracy and allow licensing authorities to become more proactive and holistic in their approach to ensure that applications are consistent with their own local policies subject to each case being considered on its merits. It effectively removes the 'must grant' presumption in the absence of objection provisions of the Act which have caused so much harm.
2. OAH? supports changing the burden of proof to demonstrating that a licensing authority's actions are beneficial for the promotion of the licensing objectives because this removes the chance of complex legal challenges by trade barristers and the associated legal costs to decide whether a particular decision is proved to be 'necessary'.
3. OAH? proposes that applicants are required to properly address the promotion of each of the licensing objectives as part of their application and that leaving these sections blank or failing to properly address a licensing objective would require the licensing authority to declare the application invalid and require a resubmission. In the case of applications which the LA considers to have the potential for a major adverse impact on the licensing objectives the LA should have the discretion to require a full environmental assessment be carried out and form part of the application. The Ministerial Guidance should be revised to make these points clear and that the burden of proof rests with the applicant that they have properly addressed each objective.
4. OAH? believes that giving the police this special position could have a major adverse impact. The primary focus for the police is on reducing recorded crime and not promoting the four licensing objectives. They are often unwilling to actively address public nuisance and low level anti-social behaviour which are the frequent adverse impacts of a licensed premises of concern to both local residents and the other various responsible authorities. It is also the case that the knowledge and training of individual police officers in licensing issues varies greatly and some representations or conditions can be phrased in ways which are ill thought through and if agreed to in full could have unintended consequences. Yet these representations would be expected to prevail over better worded conditions proposed by other parties. Also if this proposal is implemented as drafted the absence of an objection by the police (which might just be because they have no crime and disorder concerns) could be used by the applicant by implication as a tacit form of endorsement of their application.
5. OAH? believes that in terms of involving the community there needs to be an explicit statement in the Guidance that local people and their representatives have an important locus in formulating policies and that the LA invitation to consult on

local licensing policy should be simple and jargon free (perhaps backed up by something like a Crystal mark). However we believe that the best way to involve the community more is to improve public awareness of licence applications. The Government need to revise the currently very prescriptive rules for advertising applications which often do not work (for example there are fewer and fewer local newspapers and the advertisements in them are usually in tiny print on back pages). The responsibility for advertising the applications should be passed to licensing authorities who can decide the most effective way to advertise applications, including circulating notices by post, on the basis of full recovery from the applicant of their reasonable costs.

6. OAH? believes that this will be a positive step in allowing local people more of a say, provided that such representations are not judged to be frivolous or vexatious.
7. OAH? is in favour of making health bodies responsible authorities provided their representations are based on clear local health evidence.
8. OAH? believes there will need to be a clear definition of what is meant by health harm and what is included and excluded. Our assumption in this consultation is that it relates to harm from over-consumption of alcohol. However, we believe that the indirect health effects on neighbouring residents in terms of noise and stress, particularly in areas where there is a cumulative impact policy (CIP), should also be capable of being taken into account.
9. OAH? fully supports making all local groups, who can reasonably demonstrate that they are representing other residents, interested parties as this would be a way for individuals who may be frightened or shy of making their own representations to get an organisation to do so on their behalf.
10. OAH? is concerned at the way this section is drafted because we cannot see that it is fair to applicants or those who have made representations to have their right of appeal to an independent body against a decision of the licensing authority taken away from them by the matter being simply referred back to the body whose decision they are appealing against. We believe this section on appeals needs completely rethinking.
11. OAH? supports this proposal provided that if an appeal is made by the holder of a premises licence then the hearing of that appeal should be held within 28 days. Otherwise decisions of a licensing authority which are subsequently set aside would have a disproportionately adverse effect on a premises licence holder simply by virtue of the length of time that elapsed before an appeal.
12. OAH? fully supports allowing licensing authorities to decide the hours of an EMRO if it is beneficial for the promotion of the licensing objectives in their local area as this will allow licensing authorities to respond quickly to adverse late night situations as they arise and target the EMROs to those premises or groups of premises which they consider to be undermining the licensing objectives.
13. OAH? fully supports repealing Alcohol Disorder Zones; it never supported them in the first place.
14. OAH? supports the removal of the evidential requirement for CIPs subject to a test of reasonableness on the licensing authority and a requirement that the areas covered by one or more CIP policies are set out in the local licensing policy

statement. Each CIP proposal should be properly consulted upon before implementation otherwise the reputation and effectiveness of such policies may easily be undermined. The guidance should be reviewed to make clear that CIP policies can include variation applications (other than minor variations) and that off-licences are also covered as the 'pre-loading of alcohol from supermarkets and other off-licences is becoming an important part of the irresponsible consumption of alcohol.

15. OAH? supports a late night levy subject to the full cost recovery set out in paras 10.1 and 10.2, provided that there is discretion as to how much each local authority can charge, the hour at which the levy commences and over what types of licensed premises it covers so that those licensed premises which have no adverse impacts are charged less or are exempted from the levy.
16. OAH? believes that many premises operate without causing any additional costs to the local authority, not just those that join such schemes as Best Bar None, and that the local authority should have the discretion to exempt or charge lesser amounts for premises such as hotels or restaurants which may be open late but where there is no evidence of their activities generating additional costs to the police. Charges should be based on evidence such as the number of complaints, police recorded incidents, ambulance callouts etc.
17. OAH? supports the recouping of other legitimate additional costs subject to the provisos made in the response to question 25.
18. OAH? would welcome an early review of the guidance to give effect to those proposals to rebalance the Licensing Act 2003 which do not require primary legislation. We welcome and support more discretion being given to local authorities to decide hours policies that best reflect the needs of their area. However, the need for this is not just in terms of cutting alcohol related crime but also to cut public nuisance. In addition the evidence base for zoning would need to be looked at closely so that any residents living within a declared zone do not find that their residential amenity is adversely affected. This could be one unintended consequence of a badly thought through zoning policy.
- 19a. OAH? believes this would be a beneficial reform to the TENs regime but that the revision should also allow interested parties to object to a TEN as they may be those most adversely affected by it.
- 19b. OAH? supports this proposal which would make for better procedure and decision making.
- 19c. OAH? supports this proposal, subject to giving the licensing authority discretion in genuinely exceptional cases to grant a TEN in with a shorter notice period.
- 19d. OAH? has real concerns about the whole TENs regime: on the one hand it is important to give much greater flexibility to village halls, voluntary sports clubs and the like but on the other some commercial premise licence holders have exploited the system to hold TENs in different parts of their premises so as to increase the number of TENs well above that which was originally intended. We believe that the number of exclusions for voluntary groups and village halls etc should be increased. For

commercial premises licence holders the regime should be tightened so that all the existing licensing conditions apply for the period of a TEN.

20a. OAH? does not support this proposal because it is better that TENs, if approved, are held by a professional personal licence holder who has a licence potentially to lose rather than an unqualified member of the public.

20b. OAH? fully supports measures which would prevent procedural ruses such as this that have undermined confidence in the TENs system.

21. OAH? supports increasing the minimum to 168 hours.

22. OAH? does not think an upper limit is necessary because it is always open to the police or licensing authority to call for an expedited review if the voluntary period cannot be agreed by negotiation.

23. OAH? supports the thrust of the proposal but believes that it is important that some discretion remains with the local authority to take account of the individual circumstances of a case.

24a.b.c. OAH? does not regard itself as having expertise in relation to these questions but would welcome any proposals which discourage the 'pre-loading' of alcohol by consumers from supermarkets and other off licences which is a key factor in much of the anti-social behaviour and disorder which follows later at night.

25. OAH? supports full cost recovery but is aware that under the old (pre 2003 Act) regulated entertainment licensing system the charging structure more fairly levied charges in relation to size, capacity and activity. The Licensing Act 2003 fee structure has had the effect of reducing fees for the larger venues whilst substantially increasing them for smaller premises. This is regressive and regrettable and we urge that any future full cost recovery system is based more transparently on the costs that each type of premises creates.

26. OAH? fully supports this proposal provided that the licensing authority retains some discretion for exceptional cases.

27. OAH? believes that it is too early to say for certain if they have had a positive impact but that the first three new conditions, on the face of it, can only be helpful in reducing alcohol related harm.

28. OAH? would not wish to see any of the mandatory conditions repealed.

29. OAH? has no specific deregulation proposals but would urge that the following are all sensible reforms which should be included in rebalancing the Act:

- Remove the requirement for representations to be in paper form and allow electronic representation and subsequent correspondence.
- Make it mandatory that a minimum of 3 councillors sit on a licensing panel because in at least one local authority standard practice is for there only to be 2 which in effect means that it is decision by the chair of the panel because of their casting vote.

- The 28 period for making representations should start from the date when the application appears on the licensing register rather than when it is received by the local authority. At present applications can take many days to validate and may only appear on a licensing register shortly before the expiry of 28 days. As electronic registers are increasingly becoming the preferred method by which interested parties can monitor licensing applications this would make the system simpler and clearer.
- Completely reform and produce new legislation in place of TENs which is a botched system.

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