

11. AN ACCOUNTABLE LICENSING AUTHORITY 2

The new licensing authority

117. The current responsibility of magistrates for liquor licensing reflects their traditional role in maintaining the peace and the association of alcohol with crime. Entertainment licensing came on the scene at a time when the magistrates' role had moved a long way from law enforcement towards the administration of justice. With an integrated system of licensing it is necessary to decide if the responsibilities should fall to the magistrates or the local authorities or some third body which might involve both.
118. The Better Regulation Task Force favoured the new joint responsibility going to the local authorities, on the grounds that licensing is not a judicial function. The proposal also fits well with the new responsibilities of local authorities, in the Crime and Disorder Act 1998, for producing and implementing crime reduction and community safety strategies in partnership with the police and other bodies.
119. The idea of a new local licensing body, including magistrates, councillors and others, has some appeal in steering a middle course. But we share the Task Force's concerns about the cost and administrative upheaval of introducing such a system. The accountability of a new body would also be obscure.
120. We are not in favour of any kind of national licensing board. The issues, particularly with regard to the premises licence, are mainly local issues. There is a strong and inescapable link between planning and licensing premises where people gather to drink and be entertained. Local authorities plan town and city centres with an eye to the range of social and entertainment facilities available for residents and tourists in mind, encouraging a social environment which all can enjoy.
121. We also think it is important to ensure that the award of personal and premises licences is the responsibility of the same body. Some have suggested that there is a case for magistrates issuing personal licences and local authorities issuing premises licences; but there are strong arguments against this. Apart from anything else, the personal licence would, on the proposals above, be issued automatically if the applicant had passed a test of social responsibility and had no relevant convictions. There are no reasons to involve the judiciary in a process that does not involve the exercise of judicial discretion.
122. We know that some in the leisure and hospitality industry and some practising lawyers, who represent them on licensing matters, have anxieties about the ways in which some local authorities have handled public entertainment licensing, and doubts about enlarging these responsibilities into the areas of alcohol licensing. But, provided that the new arrangements can be set up in such a way as to ensure that the local authority acting as a licensing authority works in a procedurally fair and consistent way, and that the factors to which it should have regard are well defined, convincing arguments against the choice of local authorities as licensing authorities are hard to find. With an integrated premises licensing scheme covering not just the sale of alcohol but also entertainment and refreshment the enlargement of magistrates' responsibilities even further beyond the judicial boundary is hard to justify.

123. There are three compelling reasons in favour of giving the local authority (at district level) the responsibilities we have described in this White Paper. They are:

- ✓ accountability: we strongly believe that the licensing authority should be accountable to local residents whose lives are fundamentally affected by the decisions taken
- ✓ accessibility: many local residents may be inhibited by court processes, and would be more willing to seek to influence decisions if in the hands of local councillors
- ✓ crime and disorder: local authorities now have a leading statutory role in preventing local crime and disorder, and the link between alcohol and crime persuasively argues for them to have a similar lead on licensing.

124. In reaching our conclusion, we do not in any way seek to devalue the importance of the wider contribution the local licensing justices have made for so many years. While in our proposals they would be relieved of administrative licensing responsibilities, they would retain, in their capacity as magistrates, the responsibility for dealing with people charged with offences under licensing law and for the imposition of sanctions and penalties in respect of personal licence holders.

125. We believe a small licensing committee would be more effective and efficient than one involving large numbers. There is a good case for saying that it should include three members drawn from a larger panel of qualified councillors, and therefore be capable of meeting frequently and at relatively short notice. It will be important to establish in statute which councillors would be automatically disqualified from participating. For example, in Scotland, any person who is a brewer, maltster, distiller in, or dealer in or retailer of alcoholic liquor, (or who is in partnership with or employed by such a person) is disqualified from acting as a member of a licensing committee or board. Wider provisions will be needed in England and Wales because of the range of premises and businesses that will be affected by the committee's decisions. In addition, we think it is right that any councillor representing the ward in which premises that are the subject of proceedings are situated should also not participate. This will avoid the possibility of particular individuals coming under unreasonable pressure, for example, close to elections.

126. In order to ensure that the licensing authorities act fairly and properly, we also propose that:

- ✓ the Home Secretary should take powers to lay down procedural rules for the purpose of securing propriety and reasonable consistency in procedures across England and Wales. The rules would include:
 - ▶▶ the form of application
 - ▶▶ notice of hearings
 - ▶▶ the conduct of hearings themselves

- ▶▶ the right to hear and comment on objections in good time
 - ▶▶ notification of decisions (particularly reasons for refusals)
 - ▶▶ time limits for decisions.
- ✓ the authority will be required in law to take account of guidance on any issue relating to licensing issued by the Home Secretary.