

SCRUTINY COUNCIL INITIATIVE: PROGRESS REPORT 2007

1. SUMMARY

1.1 In November 2005 DCMS invited a small, representative, group of 10 licensing authorities to help us monitor and evaluate the new licensing regime as licensing 'Scrutiny Councils'. The 10 councils participating in the initiative were: Manchester, Taunton Deane, Blackpool, Cardiff, Birmingham, Newcastle, Nottingham, Brighton and Hove, Bristol and Havering.

1.2 The Scrutiny Council initiative was formally launched by James Purnell, then Minister for Licensing, on 25 November 2005 and ended in June 2006. During this time, DCMS officials visited each Council on a regular basis to collect information and data about the practical implementation of the Act and also organised two further plenary meetings and a round of regional meetings in May.

1.3 The initiative was successful on all levels providing:

- a good example of successful partnership working between central and local government;
- an insight into how the national policy framework has been translated into local licensing policies;
- practical experience of how the licensing regime is being implemented in a range of local authorities to tackle crime and disorder and public nuisance in town and city centres;
- examples of good practice and innovation, including some excellent partnership working between SCs, their responsible authorities and interested parties;
- quantitative data and qualitative case study material to inform Ministers and the wider Government strategy on the prevention of alcohol abuse;
- evidence to support the review of the statutory Guidance, leading to proposals for clarification, addition and changes, most of which have been taken forward in the revised Guidance published on 28 June 2007;
- evidence to inform the DCLG's 'How to' programme on Managing Town Centres;
- evidence to inform the independent Fees Review Panel.

1.4 This final Scrutiny Council report was published on the DCMS website on 24 July 2006. DCMS Ministers undertook to consider all the issues raised in the report as part of the Department's ongoing work to monitor and evaluate the licensing regime. Ministers also agreed to revisit the recommendations in November 2007 around the 2nd Anniversary of the Licensing Act. This report:

- describes the action that DCMS has taken to address the issues raised by Scrutiny Councils;
- revisits some of the early benefits of the licensing regime that were identified in the initial report to see if longer term trends are emerging;
- gives examples, provided by the Scrutiny Councils, of how the Act is helping to address the problems of alcohol related violence and public nuisance in town and city centres;
- provides recent data for each Council covering, for example, numbers of reviews, hearings, etc.

2. LICENSING ISSUES

2.1 In the final report, Scrutiny Councils (SCs) identified several issues around the practical implementation and interpretation of the Act and made a number of suggestions aimed at improving and fine tuning the current arrangements. Many of these recommendations were taken forward in the **supplementary Guidance** published on 22 June 2006 and **the revised Guidance** published 28 June 2007 which superseded it. Others are being taken forward, or will be taken forward in future, as part of the DCMS Simplification Plan published in December 2006.

Arrangements for advertising applications

2.2 The majority of Councils agreed that the current advertising arrangements could be improved, and put forward several suggestions as follows, although there was no consensus on the preferred approach.

- A letter drop to all residents living in the vicinity of a premises, either in addition to the current advertising requirements or instead of the newspaper advert, which some felt was not effective, particularly where there was more than one local paper, and expensive. Some favoured the approach in the Gambling Act which gives applicants a choice of advertising options and asks them to choose two out of three, depending on local circumstances. The majority of SCs agreed that the local authority should carry out the leaflet drop, rather than the applicant, to ensure consistency. Some SCs were already doing this; for example, Havering licensing authority writes to all local residents living within 100m of the premises to inform them of the application. However, other SCs felt that this could lead to problems around the definition of vicinity.

Government response

The DCMS Simplification Plan includes a commitment to bring forward proposals for improving the application process, including the advertising arrangements. This work will be taken forward over the next few months with a view to consulting about any proposed changes and amending the relevant regulations next year.

- Local authorities should be able to inform councillors of new applications in their area so that they can advise residents. Some SCs were already doing this, but were concerned about whether it could be construed as 'soliciting' representations.

Government response

Paragraph 8.11 of the revised Guidance clarifies that licensing authorities may inform councillors of applications as long as this is done in a neutral way.

- Applicants should include more detail on notices, e.g. hours varied from/to, licensable activities applied for, etc and should ensure that they are clearly displayed.

Government response

Clarification that notices should include all relevant details was included in the supplementary Guidance and carried forward into paragraphs 8.45 and 8.47 of the revised Guidance.

- Applicants should be required to copy notices to the LA so that the LA can confirm that they have been posted and contain the correct information. However, some SCs thought that merely copying the notice would not be proof that it had been posted and licensing officers would still have to physically check the premises.

Government response

The DCMS Simplification Plan includes a commitment to bring forward proposals for improving the application process, including advertising arrangements. This work will be taken forward over the next few months with a view to consulting about any proposed changes and amending the relevant regulations next year.

Temporary Event Notices (TENs)

2.3 SCs raised a number of issues about the TENs process including:

- the 48 hour period during which the police may make objections. Some SCs thought that this was not long enough for the police to make an objection, particularly if notices were served on unmanned police stations on a Friday.
- whether all responsible authorities should be able to object and whether they should be able to make objections around other licensing objectives, such as public safety.
- the lack of discretion for licensing authorities to accept applications which had been submitted within 10 working days of the event.
- the annual limit of 5 temporary event notices per year for non personal licence holders and twelve for each unlicensed premises. The majority of SCs were against an increase in the TENs limits for village and other community halls.

- the requirement for a DPS to be present on licensed community premises should be examined as a better alternative to increasing TENs limits.

Government response

All these issues were considered by DCMS as part of a review of the TENs regulations during 2006 and the Minister specifically asked SCs for their views on the issues relating to village halls and the TEN limitations. At the time, the Government did not consider that there were convincing arguments for making significant changes to the TENs process. However, DCMS will continue to monitor this area and will make any adjustments that prove necessary in the future. In addition, the commitment to look at possible improvements to the application process under the DCMS simplification plan includes the requirements for giving a temporary event notice process, such as the notice form and time limits.

DCMS recently completed a public consultation on a proposal to remove the requirement for village and community halls to have a DPS and is currently analysing the responses. [Note: may need to be updated before publication]

Role of the Personal Licence Holder (PLH) and Designated Premises Supervisor (DPS)

2.4 Several councils asked for greater clarity about the roles and liability of the DPS and PLH, particularly in respect to authorisation of sale when they are absent for long periods, and the number of premises for which a DPS could be responsible.

Government response

The supplementary Guidance clarified that

- the PLH does not have to supervise directly each sale of alcohol;
- where the PLH is absent for a long period, they will need to authorise staff to sell alcohol in their absence, for example by a specific oral or written statement given to the individual.
- a DPS may be responsible for more than one premises as long as they can fully discharge their responsibilities under the Act.

The revised Guidance (paragraphs 10.48 – 10.53) recommends that personal licence holders provide written authorisation as the existence of verbal authorisation will be difficult to prove in court.

Role of Responsible Authorities

2.5 Some responsible authorities were very engaged in the licensing process and were clear about their role and responsibilities, others were less so. However, there were no clear trends or patterns across all ten SCs and it was clear that the situation is changing all the time as responsible authorities become more used to the process and more aware of their role in it. Most SCs thought it would be helpful to have more central guidance to responsible authorities on their roles and responsibilities in the new licensing regime.

SCs identified a need for greater alignment between the planning and licensing regime and more clarity about the legal situation when planning committees imposed different opening hours to licensing committees.

Government response

DCMS clarified in the supplementary Guidance that where opening hours imposed by planning and licensing bodies differ, the applicant must observe the earlier hours. The revised Guidance (paragraphs 13.64 – 13.68) explains further the separation of the planning and licensing regimes.

Role of Councillors

2.6 Some SCs felt that local councillors, because of their links to the local community, should play a bigger part in the licensing process so that they could make representations even if they did not live in the vicinity and had not been approached by residents. In other words, they should automatically qualify as interested parties in their own right. However, other SCs were concerned about possible perceptions of bias from other parties, particularly businesses, if councillors were given these powers.

Government response

DCMS worked with Communities and Local Government to amend the Code of Conduct for Members to remove a potential restriction on councillors with a prejudicial interest in an application speaking at licensing hearings. The amended Code was reflected in the revised Guidance (paragraphs 8.7-8.10).

Confidentiality of Representations

2.7 Some SCs reported that, in isolated cases, residents had felt uncomfortable about making representations because of the requirement to divulge their names and addresses to the applicant, and in a few cases had withdrawn their complaints entirely. Some SCs were addressing this issue by advising residents to make their representations via the relevant responsible authority or ward councillor. Another approach suggested was to withhold names and addresses in exceptional cases where the resident had reasonable concerns (e.g. where a premises was known to be involved in drugs or other crimes), but to supply sufficient information, such as the road name, to establish that the resident lived in the vicinity. Most SCs agreed that there should be additional guidance on how to deal with these isolated cases.

Government response

The revised Guidance (paragraphs 9.14-9.18) provides options that licensing authorities might want to consider in isolated cases where interested parties have a reasonable fear of intimidation and may be deterred from making representations.

Application Forms

2.8 SCs suggested a number of minor improvements to the application form to make it more user friendly. They also felt that it would be useful to have more guidance on the form itself rather than in guidance to applicants on the DCMS website.

Government response

The DCMS Simplification Plan includes a commitment to bring forwards proposals for improving the application process, including the forms. This work will be taken forward over the next few months with a view to consulting about any proposed changes and amending the relevant regulations next year.

Variations

2.9 SCs raised a number of issues round the process for applying for variations to licences.

- the Guidance introduces the concept of a 'major' variation, which is not in the legislation, but is silent on what constitutes a 'substantial' variation according to the Act. The Guidance should be brought in line with the Act and provide advice on what constitutes a substantial variation.
- There should be a simplified process or perhaps a 'slip rule' in the Guidance for very minor structural changes to a premises. For example, licensing authorities could allow applicants to submit a revised plan and waive the requirement for a new application form.

Government response

The supplementary Guidance provided some clarification of the use of the term 'major' variation and a full explanation was provided in the revised Guidance (paragraphs 8.33-8.38).

DCMS is currently consulting on a proposal to amend the Act to introduce a simplified application process for 'minor' variations. Depending on the outcome of consultation, the Government plans to introduce the new process next year by means of a Legislative Reform Order.

Cumulative Impact Policies (CIPs)

2.10 A number of SCs have put in place special policies on cumulative impact and others are considering introducing them. All SCs agreed that CIPs were not a solution in themselves, but could only work as part of a broad strategy involving a range of enforcement and other measures and good partnership working.

2.11 SCs agreed that CIPs were generally working well, but some felt that they could usefully be extended to cover off sales such as off licences where groups of youths tended to congregate, resulting in crime and disorder.

Government response

The revised Guidance (paragraphs 13.24-13.39) clarifies that a CIP may apply in relation to variations as well as new applications.

Vicinity

2.12 SCs varied widely in their interpretation of vicinity, with some taking a more liberal view and including routes home on main roads and others prescribing a set distance from licensed premises in their licensing policy. Some SCs thought it would be useful to have more guidance on vicinity, but others felt it was preferable to have local discretion. A set distance from a premises might be suitable for a rural area, for instance, but not for an urban centre.

Government response

The revised Guidance (paragraphs 9.4-9.7) clarifies that licensing authorities that indicate fixed distances within which an individual is considered an interested party should make clear that this is only a guideline and be prepared to consider representations from outside that distance if there is evidence of impact.

3. EMERGING BENEFITS OF THE LICENSING REGIME

3.1 In the initial report, we identified some early benefits of the new licensing regime, including:

- better engagement of residents in the licensing process;
- good use of mediation to avoid hearings where possible;
- evidence that the new licensing regime was helping to turn around premises with a long history of disorder, alcohol-related violence, etc; and
- improved partnership working between licensing authorities, responsible authorities, local trade and residents.

3.2 The information and case studies we have gathered from Scrutiny Councils in October/November 2007 suggests that these initial benefits are starting to develop into longer term trends and the Licensing Act is having a real impact on key issues such as crime and disorder and sales of alcohol to children, particularly in our town and city centres.

Engagement of residents

3.3 During the Scrutiny Council initiative, councils noted that licensing reform was having a positive impact on the engagement of residents in the licensing process. There is evidence that this trend is continuing as local people become aware of their rights to make representations if they have concerns about a particular premises.

In Manchester, Trading Standards officers applied for reviews of two off-licences situated a few doors apart from each other on a busy road in a residential area, following a high number of complaints from local residents, the police and local councillors about sales of alcohol to children. Some local residents said they were too frightened to go near these shops at night due to the large groups of young people congregating outside them. Following a hearing, the licensing sub-committee decided that the licences for each shop should be revoked. Feedback from residents is that the problems they were experiencing previously have been much reduced and the Trading Standards Service is no longer receiving complaints.

Residents in Nottingham were concerned about the level of crime and disorder and public nuisance caused by customers of a premises with a 24 hour off-licence. They submitted an application for review via a local ward councillor and as a result, the licence was amended to reduce the hours that alcohol could be supplied from 24 hours to 6am – 11pm.

Use of mediation

3.4 In the first few months of the new licensing regime, SCs were seeking to resolve issues through mediation where possible and in many cases were able to avoid going to a hearing. Time was an issue due to the scale of applications received during transition, but the situation was gradually improving. Two years into the new regime, SCs have had the time to develop and implement successful mediation procedures which can save time and resources for all concerned.

In Birmingham, a Joint Licensing Task Force, involving Licensing Enforcement officers, Police, Trading Standards, Environmental Health, Fire Service and others has successfully resolved many issues amicably, negating the need for review hearings and possible appeals.

Tackling problem premises

3.5 During the Scrutiny Council initiative, we found early evidence that licensing officers were using their new closure and review powers to turn around problem premises and tackle serious problems of crime and disorder. The latest evidence from SCs suggests that licensing officers are continuing to use a range of approaches based on the new licensing laws and better partnership working to address alcohol related violence and disorder and prevent the sale of alcohol to children.

In Cardiff serious problems of rogue premises are being resolved through active risk assessment and management by South Wales Police. For example, one premises had failed to work with the police to resolve serious issues of crime and disorder which were causing local residents serious problems. The police used their powers to review the licence and the Council's licensing committee took account of representations from local residents and ward councillors in deciding to suspend the licence and remove the designated premises supervisor, who was also the licence holder. The licence holder subsequently gave up the lease of the premises and the new licensee worked with the local community and volunteered conditions requested by local residents. The re-opened premises has now become an asset to the community.

Birmingham police have used their review powers to tackle serious crime and disorder problems at a city centre nightclub. The premises was a 24-hour drinking establishment on a Friday and Saturday and evidence showed over 70 recent incidents of crime and disorder involving violence and weapons. On review, the Council restricted the hours restricted to 2.00 a.m. and placed stringent conditions on the Premises Licence.

In Brighton and Hove, Sussex Police and Council Trading Standards have used the new review powers to tackle problems caused by persistent underage sales by supermarkets and shops. The reviews resulted in requirements for store owners to undertake risk assessments, staff training and some had their licences suspended.

The London Borough of Havering successfully used the review process to impose numerous conditions on a problem premises. As a result the premises was turned around and subsequently won the 'best night club venue' local night time award, with a judging panel including the police and a licensing officer.

Improved Partnership working

3.6 In the initial review, we found that improved partnership working between licensing officers and other enforcement bodies was starting to have a real impact. The latest case studies from SCs suggest that joint enforcement initiatives are continuing to deliver real improvements in the management of the night time economy, particularly in busy town and city centres.

Manchester City Council has established a Licensing Enforcement Project to undertake proactive night-time monitoring and enforcement action against licensed premises. The project contributes to several strategic targets in the Council's Crime and Disorder strategy by ensuring that licensed premises are responsibly managed, and educating managers and staff about the dangers of selling excessive amounts of alcohol to people. It has helped to reduce the levels of extreme drunkenness and the Council considers that as alcohol and crime are linked, any action to help people drink sensibly will impact on reducing violent crime, domestic violence and anti-social behaviour. It has also carried out undercover surveillance and joint police operations to help prevent young people obtaining alcohol from off licences. The project has managed to resolve 84% of complaints at first visit and licence reviews have been instigated by Trading Standards, Police and Environmental Health usually resulting in hours and conditions being amended on the licence, or licences being revoked.

In Newcastle, the Best Bar none Award scheme run by the City Council and Northumbria Police under the Crime and Disorder Reduction Partnership is going from strength to strength and is starting to have a real impact on local premises. The competition goes from strength to strength and the "awards" are used by the licensing trade to market their premises. Large and small operators are now entering the scheme and it has helped develop and maintain safely managed premises.

Bristol City Council is pleased with the partnership working it has developed with the police, particularly outside of the main central Bristol areas where they have always had good relationships. A number of well run trade groups have been established, for example Bristol Harbourside Forum, which has in conjunction with the new laws, helped to reduce crime and disorder in certain hot spots.

And in Taunton Deane, the Borough Council is working with other agencies to tackle alcohol related crime and disorder through the Somerset Tackling Alcohol Related Crime (STARC) partnership. This joined up approach, which involves the Council, Police, Trading Standards, Community Safety and Crime and Disorder teams, is

working well and, for example, promotes local proof of age schemes by providing posters and other support to licensed premises.

Licensing public land

3.7 Since the Act was introduced, the Government has encouraged local authorities to license public land in order to allow a range of events to take place throughout the year. Those using the sites will normally still be subject to certain conditions and restrictions, but they do not have to obtain a separate premises licence or give a temporary event notice.

To date over 150 councils are listed on the DCMS Register of Local Authority Licensed Public Spaces in England and Wales and around 1,500 of public spaces have been licensed.

Newcastle City Council has used the Act effectively to licence 24 areas of public open space placing the Council in an excellent position to both effectively manage these areas of land and at the same time promote the arts and cultural agendas of the Council. The licensed land has been used to stage weekend music festivals, such as the Green and Orange Festivals, and festivals reflecting the City's cultural diversity, such as the MELA, as well as a host of other community based festivals and events.

Brighton Festival uses many venues within the city licensed for theatre, dance and music, but since the Council has licensed many of its open spaces the Festival also takes place in streets and parks with a programme of carnival, fireworks, large scale performance and the famous "Streets of Brighton", street art, theatre, comedy and music.

4. DATA

4.1 Up to date licensing statistics for each Council are at Annex 1.

5. CONCLUSIONS

The Scrutiny Council Initiative

5.1 Scrutiny Councils are generally content that the Government has addressed, or plans to address, all the issues raised in the final Scrutiny Council report.

5.2 Inevitably new issues have emerged since the Act first came into force, such as the potential for public nuisance from people smoking outside premises. And SCs continue to have some concerns about the following issues:

- the collection of licence fees;
- the development of a central licensing register;
- temporary event notices;
- lap dancing and adult entertainment;;
- the advertising of applications and reviews;
- the role of local councillors.

5.3 The Government is already taking action on some of these issues. As described earlier, **The DCMS Simplification Plan includes a commitment to bring forward proposals for improving the application process. These will cover issues such as advertising arrangements and notification periods.** Issues and recommendations around the collection of licence fees were also raised by the Independent Fees Review Panel and the Government will be considered as part of its response to the Panel's report.

5.4 The Government will continue to keep other issues, such as the development of a central licensing register and the role of councillors under the Act under review. It will also monitor carefully the implications of new developments such as the impact of the smoking ban on public nuisance outside licensed premises.

5.5 The issue of how far the Act can be used to regulate lap dancing and adult entertainment has been clarified by the Department in response to official correspondence.

5.6 The Home Office has lead responsibility for policy towards lap-dancing/stripping and censorship of plays because of its wider responsibilities for the law dealing with pornography, indecent displays, public indecency and obscenity. However, the Licensing Act 2003 provides an appropriate regulatory framework for all forms of regulated entertainment, including that of an adult nature, but only insofar as it impacts on the four licensing objectives: the protection of children from harm; public safety; prevention of crime and disorder; and the prevention of public nuisance. This means that any representations must be clearly linked to the one or more of the licensing objectives.

5.7 Although the Scrutiny Council initiative ended formally in June 2006, the Department continues to maintain its special relationship with the ten Councils to our mutual benefit. Ministers have sought views from SCs on early policy proposals in a number of areas and SC officers have participated in working groups on the review of Guidance and the proposal to introduce a process for minor variations to licences.

5.8 This has given Ministers valuable access to views from the 'frontline' of licensing and given licensing officers a taste of policy development at the centre. Ministers very much value the Councils' contribution to licensing policy and will continue to use the SC network to test future policy proposals aimed at reducing unnecessary cost and bureaucracy arising from the licensing regime.

The Licensing regime

5.9 The Act was two years old on 24 November 2007 and, the feedback and evidence gathered from Scrutiny Councils to date is encouraging.

5.10 As residents become more aware of their powers under the Act, they are becoming increasingly involved in the licensing process. Representations from concerned residents are resulting in reviews of problem premises across the country, the imposition of tough new conditions and, in extreme cases, suspension or revocation of licences. Licensing authorities are working in partnership with the other enforcement authorities to tackle crime and disorder, public nuisance and sales

of alcohol to children and a targeted approach to enforcement is starting to have a real beneficial impact, particularly in our town and city centres.

Blackpool Council said:

“ Under the new Law, we have been able to introduce and participate in new initiatives that were not possible under previous legislation, for example multi agency visits to public houses, hotels, take-aways and off-licences. The Council and its partners have worked closely with key stakeholders from the police, licensing trade and representatives from the tourism industry to flex its muscles and ensure that licensed premises are complying with the necessary legislation.”

And, in Brighton and Hove :

'The spread in licensing hours appears to have reduced turmoil at closing time, reducing low level violent crime and the review powers have given police, environmental health officers and residents effective powers to deal with irresponsibly run licensed premises.'

5.11 The evidence collected from Scrutiny Councils suggests that the early benefits of the licensing regime are developing into longer term trends that, together with other measures, can help secure a lasting positive impact in our towns and cities.