

## **CONSULTATION ON GOVERNMENT PROPOSAL - 'DRINKING RESPONSIBLY'**

### **1 SUMMARY**

- 1.1 This report introduces the consultative document published by the Department for Culture, Media and Sport (DCMS) upon which comment is invited by 28 February 2005.
- 1.2 The report summarises background information provided by DCMS and outlines government proposals to tackle alcohol related crime and disorder and to deter the commission of licensing offences, all of which would have to be introduced through future primary legislation.
- 1.3 Appendix A to the report suggests responses, where invited, and seeks approval by Members for them to be forwarded to DCMS on behalf of the Council.

### **2 INTRODUCTION**

- 2.1 The consultative document consists of six chapters in which are set out proposals to designate 'alcohol disorder' zones, to tackle under-age drinking and to change the drinking culture.
- 2.2 In essence, the proposals are to: -
  - (a) make errant premises reimburse local authorities for additional costs incurred through the alcohol-fuelled behaviour of their patrons,
  - (b) provide additional 'closure' powers for police, licensing authority and trading standards officers and councils
  - (c) change the drinking culture by creating a civil order to exclude individuals from specified areas, i.e. licensed premises, and to review the penalties associated with alcohol related offending.
- 2.3 A copy of the consultation document has been deposited in the Member's Library at the Civic Suite for Members' information.

### **3 CONSULTATIVE DOCUMENT**

#### **Alcohol Disorder Zones**

- 3.1 Local authorities already have the power to designate geographical areas in which anti-social drinking problems exist, as alcohol free zones. Within those zones the police have powers to confiscate alcohol.

- 3.2 DCMS propose that a local authority could designate an area, where strong evidence exists of alcohol-related behaviour having reached an unacceptable level within it, as an 'alcohol disorder' zone.
- 3.3 The zone would cover (potentially) all licensed premises in an area agreed between the police and local authority, upon which consultation with the community had taken place.
- 3.4 Before designating such a zone the licensed premises that were contributing to the problem would be given notice of
- (a) the problems,
  - (b) a warning of impending zoning,
  - (c) a period of time in which to tackle the problems (recommended by DCMS to be a minimum of 8 weeks), and
  - (d) the remedial action required for zoning not to take place.
- 3.5 It is suggested that determination to create a zone could be undertaken jointly between a police officer of Superintendent rank, or above, and the local authority (as for Anti-Social Behaviour Dispersal Orders), or by a magistrate's court. It is also suggested that an appeal process would be needed.
- 3.6 Where zoning took place, the premises would be informed of what action was required for it to be lifted. It is suggested that premises would be required to agree an action plan with Crime & Disorder Reduction Partnerships or Local Strategic partnerships that address the specific issues identified by police and local authority.
- 3.7 Where premises fail to implement such actions they would be required to contribute to additional policing and other costs that were directly attributable to and arising from the disorder. It is suggested that enforcement measures would be needed to secure payment, e.g. through licensing restrictions.
- 3.8 DCMS suggest that if the proposed measures would impose new burdens on local authorities they would be compensated by both a contribution to their costs and the longer-term benefit of a reduction in crime and disorder.

### **Under-age Sales**

- 3.9 Following two alcohol enforcement campaigns it was found that sales of alcohol to and possession of alcohol by under-age persons was a significant problem.
- 3.10 Whilst powers exist for test-purchase operations to be carried out by police and trading standards services, as a result of which offenders might be prosecuted, there are no powers to enable immediate closure of premises.

- 3.11 It is proposed to introduce powers for police, trading standards officers and licensing authorities to close licensed premises that have been identified as persistently selling alcohol to under-age persons.
- 3.12 The circumstances that would trigger closure would include, for example, a significant number of fixed penalty notices for under-age selling within a limited time.
- 3.13 Offences would need to be linked to the premises as the measure is intended to address bad practice by the premises that would not otherwise be affected by individual personal penalties.
- 3.14 It is proposed that a police officer of Superintendent rank, or above, a Chief Executive of a local authority or an Inspector of Weights and Measures could exercise the power based upon specific evidence or intelligence. Alternatively a court could make an order that would override any premises licence, club premises certificate or temporary event notice.
- 3.15 It is suggested that the penalty for breaching a closure order should be the same as for breaching other closure orders under the Licensing Act 2003, i.e. a fine of £20,000 or up to 3 months imprisonment, or both.

### **Changing the Drinking Culture**

- 3.16 It is proposed to introduce a civil order to be known as a 'Drinking Banning Order' that will provide for the exclusion of individuals aged 16 years, or over, from an area.
- 3.17 The measures are intended to complement the fixed penalty notice scheme in relation to drink-related offences and are particularly targeted at individuals whose repeated abuse of alcohol causes disorder in towns and city centres.
- 3.18 The order might be made by a court following a third or subsequent alcohol-disorder related offence, or through an application to the court by either the police or local authority following the issue of a third or subsequent fixed penalty notice for a drink-related offence.
- 3.19 It is also proposed to review the scale of penalties in relation to alcohol-related offences and offenders, to ensure that appropriate penalties are available for both initial and subsequent offences and that there is an appropriate escalation of those penalties to deal with persistent offenders.

### **Rochford District Council's Response**

- 3.20 Responses are invited in relation to 17 questions tabled in respect of the three subject matters discussed above.
- 3.21 The suggested responses are shown on the attached appendix, listed under each of the subject headings.

**4 RISK IMPLICATIONS**

- 4.1 If the Council does not comment on the consultative document, the opportunity for Members to influence aspects of proposed regulation that directly affect the finances of the Council will be lost.

**5 RECOMMENDATION**

- 5.1 It is proposed that the Committee **RESOLVES**

That, subject to Members' comments, the suggested responses set out in the appendix be approved.

G Woolhouse

Head of Housing, Health & Community Care

---

**Background Papers: -**

None

For further information please contact Kevin Doyland on: -

Tel: - 01702 318036  
E-mail: - kevin.doyland@rochford.gov.uk

APPENDIX A

**Alcohol Disorder Zones**

**Q1. How should the proposed Alcohol Disorder Zones link with existing powers and with new powers under the Licensing Act 2003?**

**Response:** We have concerns over the viability of such a scheme due to the difficulty in fairly attributing liability. We suggest that in large part the intended outcomes are already addressed through Anti-social Dispersal Orders, albeit without the financial liability that is proposed against premises.

However, we consider that the proposed provisions should complement powers to make Anti-social Dispersal Orders and Alcohol-free zones notwithstanding that they would not be co-terminus in every case.

We consider that where an Alcohol Disorder Zone is created and any premises either refuses or fails to participate in action plans to address the problems identified, the legislation should provide that the licence may be reviewed under the 1<sup>st</sup> licensing objective.

**Q2. How long should the warning be?**

**Response:** The minimum period should be 8 weeks but there should be a review of the situation after 4 weeks to ensure the agreed action plans remain appropriate and focussed, or can be amended.

**Q3. What costs might be recovered?**

**Response:** Residual costs incurred by police and local authorities can be readily assessed whilst those of health authorities might not be. To be effective, costs should be retrievable quickly, e.g. within 2 weeks of establishing a zone and weekly thereafter for the duration of the zone remaining in force.

**Q4. Who should pay the costs?**

**Response:** In our view it would be manifestly unfair to hold every licensed premises in a zone equally liable, e.g. consideration must be given to what sort of premises there are, their hours and type of trading etc.

Premises that close earlier than their neighbours are likely to claim that persons involved were no longer their customers, if incidents occur after they have closed. This might be particularly true of off-licences within large supermarkets and restaurants.

Conversely premises closing later may well claim that the

persons responsible were customers of other premises' customers who have remained in the area after those premises closed.

In neither case is it likely that responsibility will be accepted nor proven. An equitable levy against all licensed premises, regardless of individual operating practices, is likely to lead to judicial challenge that would be difficult to justify.

**Q5. How should the costs be apportioned?**

Response: We feel that only those premises actually contributing to the problem should be penalised, which may vary from one day to the next. For the reasons already stated, we feel that position to be largely unattainable.

**Q6. Should all off-licences be included? How should the proposal cover off-licences? Should this be the same for all, or dependent on a trigger mechanism such as sales to under 18's?**

Response: In our understanding there is little evidence of a direct link between off-licence sales and most alcohol-related public disorder – most instances emanate from consumption in on-licensed premises. Problems associated with off-licences should, therefore, be addressed under the Licensing Act 2003 (review of premises licence, etc.) or by prosecution of offences (under-age sales, etc.)

**Q7. How should the zone be defined? Who would need to be consulted?**

Response: Zones should be limited to areas containing premises where there is evidence that they have contributed to alcohol-related disorder.

As zoning is a temporary measure, there should be no requirement for physical signing to define an area.

A similar process of consultation should be undertaken as for creating Anti-Social Dispersal Orders.

**Q8. How should the withdrawal of the zone be determined?**

Response: The zone should be withdrawn based upon recommendation of the Crime & Disorder Reduction Partnership.

Their recommendation should be based upon advice and guidance of the police and licensing authority, both of which will be pivotal to the process of creating the zone, engaged in monitoring its effects and central to receiving complaints from the public and local business.

**Q9. Should payment be enforced through licence penalties?  
If not, by what method?**

**Response:** We suggest that payment should be enforced as a civil debt.  
We do not consider that applying licensing restrictions would be appropriate as such restrictions can only be applied following a premises licence review under the licensing objectives, which recovery of a debt is not.

**Q10. Do local authorities see new burdens resulting from this?**

**Response:** Yes. For the reasons stated above, there will be numerous practical difficulties in enforcing zoning and recovering costs that will potentially lead to appeals to the courts

**Q11. A voluntary approach?**

**Response:** We support the principle of premises voluntarily contributing to local initiatives and consider that the practice should be encouraged.

**Q12. Should the concept of a Voluntary Fund be further developed at the national level, primarily for producers?**

**Response:** Yes.

### **Under-Age Sales**

**Q13. What should trigger a closure power for under-age sales?**

**Response:** We support the proposal that where it can be evidenced that a premise persistently sells to under 18's, a closure order should be used.

It is our understanding of local police/trading standards practice that premises suspected of selling to under 18's are firstly warned and visited for advice and guidance to be given, a test purchase is then carried out which if successful results in a formal caution and a further test purchase within 3 months.

We consider that where circumstances described above can be evidenced, it should trigger a closure order.

We also consider that where a closure order is made, the legislation should provide that the premises licence must be reviewed by the licensing authority.

**Q14. Who should exercise the power?**

**Response:** We endorse those persons suggested in the proposals. We do not consider that a magistrate should have to agree

beforehand with the power being exercised.

Q15. **What penalty should this attract?**

Response: We agree with the suggested penalty scale.

### **Changing the Culture**

Q16. **Should orders have minimum/maximum terms? If so, what? Should exclusions permit the geographical scope of the order to go beyond the areas where the offender has previously offended? Should the order only apply to certain times of day or should this be at the court's discretion? What should be the penalties for breach of an order?**

Response: An order should have a minimum term of 3 months or, where an offender undertakes a course of medical treatment in relation to alcohol abuse, at the satisfactory conclusion of that treatment. There should be a maximum term of 6 months.

If necessary, the order should have effect throughout England and Wales.

The court should have discretion as to when and where the order has effect.

The penalty for breach of an order should be the same as for the original offence that gave rise to imposition of the order.

Q17. **What offences should a review cover? Should it include drunk and disorderly / drink driving offences only? Should other alcohol-related offences of violence be included? What new or different penalties might be included in an escalation framework?**

Response: We consider that, ideally, a Fixed Penalty Notice should only be issued for a first offence and that subsequent offences should result in a summons.

We also consider that, with the reported upsurge in offences such as or similar to drunk & disorderly, that the penalty for that offence and all alcohol-related offences of violence should be reviewed.

We do not consider there is such a case for reviewing penalties for drink/driving.

We do consider, however, that alcohol-treatment orders should be available to the courts for all offences where alcohol has played a contributory part.