



The Association of Directors of Public Health Consultation Response

Licensing Act 2003: regulatory easements

Objectives and Scope

The Licensing Act 2003 allows premises licence holders to sell alcohol for consumption on-site or for consumption off-site or both. In response to the pandemic, the Business and Planning Act 2020 provided regulatory easements which enabled holders of licences that only allow sales for consumption on-site to automatically also do sales for consumption off-site, without any need to amend their licence.

The Licensing Act 2003 also allows licensable activities to be carried out on a one-off basis without the need for a premises licence or any other authorisation, by means of a temporary event notice. Provisions in the Business and Planning Act temporarily increased the annual number of temporary event notices that a licensed premise user can have per year.

The consultation is aimed at the hospitality sector, local licensing authorities, the police, licensed premises, members of the public and other interested parties in England and Wales where these proposals apply.

About ADPH

ADPH is the representative body for Directors of Public Health (DsPH), and is a collaborative organisation, working in partnership with others to strengthen the voice for public health, with a heritage which dates back over 160 years. ADPH works closely with a range of Government departments, including UKHSA and OHID as well as the four CMOs, NHS, devolved administrations, local authorities (LAs) and national organisations across all sectors to minimise the use of resources as well as maximise our voice.

ADPH aims to improve and protect the health of the population by:

- Representing the views of DsPH on public health policy.
- Advising on public health policy and legislation at a local, regional, national and international level.
- Providing a support network for DsPH to share ideas and good practice.
- Identifying and providing professional development opportunities for DsPH.

ADPH Position

Alcohol harm costs both individuals and society as a whole. In 2020, there were 8,974 deaths from alcohol-specific causes registered in the UK, an 18.6% increase compared with 2019 and the highest year-on-year increase since the data time series began in 2001.¹ In 2019/2020, there were 280,000 estimated admissions to hospital where the main reason was attributed to alcohol in England, and 35,781 in Scotland.^{2 3} The cost of alcohol to the UK is estimated to be at least £27 billion a year, £3.5 billion of which is the cost to NHS England.^{4 5} It is therefore imperative that considerations of public health should be placed at the heart of the

licensing policy.

The Business and Planning Act 2020 provided regulatory easements which has significant impact on alcohol use and public health. Therefore, ADPH are submitting a response to 'Consultation: Licensing Act 2003: regulatory easements' to provide our views on the impact of the regulatory easements from a public health perspective. We would also like to use this opportunity to reiterate our demand for a public health objective in the Licensing Act 2003.

Currently, the Licensing Act 2003 gives local authorities (LAs) the ability to assess the suitability of premises wishing to sell alcohol in their local area. In 2011, public health authorities were named as responsible authorities, meaning they are invited to comment on applications to sell alcohol. However, comments can only be made on the grounds of one of the four objectives in the Licensing Act:

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

A new public health objective should be introduced as part of the Licensing Act 2003. This could allow LAs to take public health impact into account in future licensing decisions. This would also serve as a legal requirement for businesses to think about public health issues, and LAs should be enabled to take action to support this.

Alcohol misuse is the biggest risk factor for death, ill-health and disability among 15-49 year-olds, and the fifth biggest risk factor across all ages.^{6,7} While it is important to consider the public health impacts of the regulatory easements under the Business and Planning Act 2020, only if public health is included as a licensing objective can the consideration of public health be truly embedded in the heart of our licensing policies.

There is widespread support amongst DsPH for a new public health licensing objective. An [LGA survey](#) asked DsPH if there was demand for a public health objective within their local authority – 89% said there was.⁸ According to 89% of respondents, the ability of DsPH to deliver effective public health would be improved 'to a great extent' or 'to a moderate extent' by the introduction of a public health licensing objective.

Respondents emphasised that a specific public health objective was required for licensing decisions to be based on local population health evidence (and the density of existing outlets) in respective areas. Without this objective, objections were often unenforceable and evidence and insight from public health was not heard. Respondents highlighted that, given the existing evidence-base around impacts on health and alcohol availability, there is a clear argument for the role of public health teams in licensing decisions and making health a fifth objective of the Licensing Act.

Response to individual questions

Q1: Do you agree that when the regulatory easement ends on 30 September 2023, there should be no automatic extension of an on-sales premises licence; anyone wishing to do off-sales should apply to their Licensing Authority for a variation to their on-sales licence?

Yes – Since 2021, the on-licensed trade has seen its footfall increase and customers willing to return post-pandemic. There is no longer an argument in 2023 that businesses need the extra 'support' of this measure to survive and therefore the Licensing Objectives should again take precedence.

On-sales and off-sales of alcohol has different implications on public health as well as the prevention of

crime and disorder; public safety; the prevention of public nuisance; and the protection of children from harm. Therefore, separate application should be made for any off-sales component of a premises licence.

Off-sales increases the time alcohol is available at home and on the street in the neighbourhood. It relocates alcohol-related problems and harms (eg violence, alcohol-related crime and anti-social behaviour) to homes and other places in the neighbourhood (eg domestic abuse and violence at home). This renders alcohol-related harm more invisible and less manageable, as alcohol-related harm and violence are less likely to occur in pubs and restaurants where there are staff security and CCTVs.

From a public health perspective, off-sales also makes it harder for public health professionals to analyse alcohol-related harm, as it would make it more difficult to identify the links between where alcohol is sold/ consumed to the harm being caused. The relocation of alcohol consumption and harm also has implications on public health interventions to prevent harm from occurring in the first place.

Therefore, as with other aspects of an on-sales operating schedule, any off-sales component of a premises licence should involve an application to vary the premises licence being made to the Licensing Authority. This will allow the responsible authorities and other parties with an opportunity to make representations regarding the suitability of the permissions that are sought and to risk assess them in relation to the statutory licensing objectives. The Licensing Authority also needs the opportunity to attach any conditions to the premises licence it sees fit in response to the varied trading arrangements.

ADPH advocate for a new public health licensing objective as part of the Licensing Act 2003. This would ensure that public health is placed at the centre of licensing policies.

Q2: Should any such amendment to an on-sales licence be treated initially as a minor variation?

No – the issue of how and when on-licensed premises provide off-sales is not a ‘minor’ issue in terms of public health and the licensing objectives. The issue frequently arises in representations from the responsible authorities, particularly in relation to the evening and night-time economy and in locations where there are issues with ‘street drinking’ supplied by off-sales. In addition, as illustrated in question one, amendment to on-sales licence would alter the patterns of alcohol consumption and alcohol-related harm, thus leading to significant impact on public health and the licensing objectives. Hence, more considerations should be given to amendment to an on-sales licence.

Q3: Should all variation applications automatically be sent to responsible authorities?

Yes – this is essential as the responsible authorities have detailed knowledge of the local crime and health risks environment into which they provide public services.

DsPH are responsible for delivering drug and alcohol services in their local area. Information on variation applications could inform public health intervention and service planning and could enable a better analysis of local population health and trends surrounding alcohol-related harms.

Q4: Should any such amendment to an on-sales licence always be a major variation?

Yes – because the responsible authorities and the wider community need the opportunity to express their views and receive sufficient information to judge their responses, if any. As illustrated in question one, amendment to on-sales licence would alter the patterns of alcohol consumption and alcohol-related harm,

thus leading to significant impact on public health and the licensing objectives. Hence, more considerations should be given to amendment to an on-sales licence.

Q5: Should all new applications for premises licences specify on-sales and off-sales or should they automatically include both?

On and off-sales listed separately – as illustrated in our response to question one, on-sales and off-sales have different accompanying health and crime risks. Off-sales increases the time alcohol is available in the neighbourhood and relocates alcohol-related problems and harms to homes and other places in the neighbourhood. It renders alcohol-related harm more invisible and less manageable and thus has different implications on public health analysis and intervention. Therefore, new applications for premises licences should specify on-sales and off-sales to inform the decision-making processes.

Q6: If a premises licence holder also holds a pavement licence for the same venue, should the area covered by the pavement licence be automatically deemed to be included in the area covered by the premises licence?

Yes – As long as the ‘pavement licence’ covers a defined area on a plan within the operating schedule. This may bring part of the public realm under the supervision of the premises when it is used by those premises for the sale, service and consumption of alcohol. As the supervision of drinking occasions is so important, particularly around issues of crime and vulnerability management, this is likely to promote the licensing objectives in most instances.

Q7: Do you agree that the regulatory easement should be made permanent, meaning that any on-sales premises licence holder is automatically able to do off sales without any need to amend their licence?

No – this would undermine the licensing objectives, operate contrary to s182 Guidance and undermine local statements of licensing policy developed through local data gathering and local consultation. The core basis of licensing adjudication – as set out in the guidance and in case law, is that each case should be treated on its merits.

Q8: If you answered yes to Q7, should it apply to off-sales, take-away or both?

This question is ambiguous – aren’t all off-sales to ‘take-away’? Or is this a reference to taking away hot food and drink post 11.00 PM? This question needs clarification for us to provide a considered response.

Q9: Are you aware of any change in the level of crime and / or anti-social behaviour as a result of the off-sales easement?

No – The Institute of Alcohol Studies (IAS) are not aware that this particular intervention has been evaluated. Evaluation would provide an improved evidence base. Nonetheless, the responsible authorities and interested parties in licensing hearings often present evidence indicating that off-sales is a contributory factor in crime and anti-social behaviour. This will often have formed part of the evidence reviews for local Statements of licensing policy. Local policy statements developed in support of the

licensing objectives are likely to be undermined by a national broad-brush approach involving 'easement' for businesses to provide off-sales in all social contexts.

Please give reasons for any of your answers to the above questions about off-sales.

The consumption of alcoholic drinks consumed as off-sales occurs in relatively un-supervised public and private settings. In certain contexts, such as the evening and night-time economy where patrons may linger on the streets after leaving on-licensed premises and move on to public transport or journeys on foot and or where there is a presence of 'street drinking' amongst people who have alcohol dependence problems, the widescale availability of off-sales is likely to have a negative impact on the licensing objectives and impact the work load of public services. One important aspect may be the unsafe use and disposal of glass containers which can be used as weapons or present public safety risks when dropped and smashed on pavements.

Q10: Do you agree that when the regulatory easement ends on 31 December 2023, the annual allowance should return to the level set out in the Licensing Act which is 15 TENs per year?

Yes – This allows licensed premises the opportunity to promote 'events' approximately once a month as a streamlined process that requires only minimal 'paperwork' and does not place undue pressure upon police licensing staff who will check and authorise the 15 events.

Currently, the application fee is inadequate to cover the cost for processing the application. Application fee should be adjusted higher proportionate to the administration cost.

Q11: Should the annual allowance set out in the Business and Planning Act be extended for a further 12 months to 31 December 2024?

No – Since 2021, the on-licensed trade has seen its footfall increase and customers willing to return post-pandemic. There is no longer an argument in 2023 that businesses need the extra 'support' from this measure to survive and therefore the licensing objectives should again take precedence.

Q12: Do you agree that when the regulatory easement ends on 31 December 2023, the annual allowance of 20 TENs should permanently remain at the level set out in the Business and Planning Act 2020?

No – Businesses making full use of their TENs allowance would be essentially trading repeatedly to later hours, sometimes much later hours. This state of affairs sidesteps the usual process of applying to vary their hours in order to obtain a permanent extension of hours supported by an appropriate set of conditions and agreed management practices on their premises licence. Given that late-night trading presents greater challenges, widespread extensions of hours require proper consideration by the Licensing Authority. There is also greater pressure upon the staff resources of police licensing required to check and approve the increased number of TENs.

Q13: Do you agree that when the regulatory easement ends on 31 December 2023, the annual allowance of 26 days should permanently remain at the level set out in the Business and Planning Act 2020?

No – As Q12, businesses making full use of their TENS allowance would be essentially trading repeatedly to later hours, sometimes much later hours. This state of affairs sidesteps the usual process of applying to vary their hours in order to obtain a permanent extension of hours supported by an appropriate set of conditions and agreed management practices on their premises licence. Given that late-night trading presents greater challenges, widespread extensions of hours require proper consideration by the Licensing Authority. There is also greater pressure upon the staff resources of police licensing required to check and approve the increased number of TENS.

Q14: Are you aware of any change in the level of crime and / or anti-social behaviour as a result of the TENS regulatory easement?

No – As far as the IAS are aware this has not been subject to evaluation. The case that late-night trading generally presents greater risks of crime and or anti-social behaviour than earlier closing is well established by empirical evidence. More pertinently, these assumptions are enshrined in the Licensing Act and accompanying guidance, for example one sees the 'Late Night Levy' applying only to the post-midnight period and 'Late Night Refreshment' licences only required by businesses that trade beyond 11.00 PM.

Please give reasons for any of your answers to the above questions about TENS.

The possible additional risks of crime and or anti-social behaviour are matters that should be assessed by licensing committees through the process of licensed operators applying to vary the hours permitted by their premises licence. Widescale use of TENS, originally intended only for 'events', sidesteps this process and therefore sidesteps the consideration of whether the proposed hours would support the licensing objectives and what steps should be taken by licensed operators to ensure that late-night trading is conducted safely and responsibly. Furthermore, interested parties, such as local residents who may be impacted by the increased numbers of late-night events and responsible authorities other than the police, are effectively removed from the process.

Premises using the full quota of TENS repeatedly in order to sidestep 'licence variation applications' are already creating a democratic deficit that runs contrary to the central tenets of the Licensing Act 2003. The removal of key stakeholder 'voices' through the 'streamlined' TENS applications is resulting in a failure to impart important local knowledge and data of a sort that should be used to improve decision-making and set appropriate conditions on premises licences that trade for extended night-time hours. These are matters that need to be considered properly by a licensing committee.

It is also important to note that in many central urban areas and resorts large numbers of licensed premises may decide to use their full quota of TENS each year in order to keep pace with their neighbouring competitors. A situation is then created, in which there is a de-facto relaxation of licensing hours across the night-time economy of areas that are already experiencing high levels of crime and disorder. This may run contrary to carefully devised local statements of licensing policy and has implications for public services and the quality of life within communities. Police forces in these areas also have to process thousands of TENS applications annually.

References

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