

# REWIRING PUBLIC SERVICES

REWIRING LICENSING





# OPEN

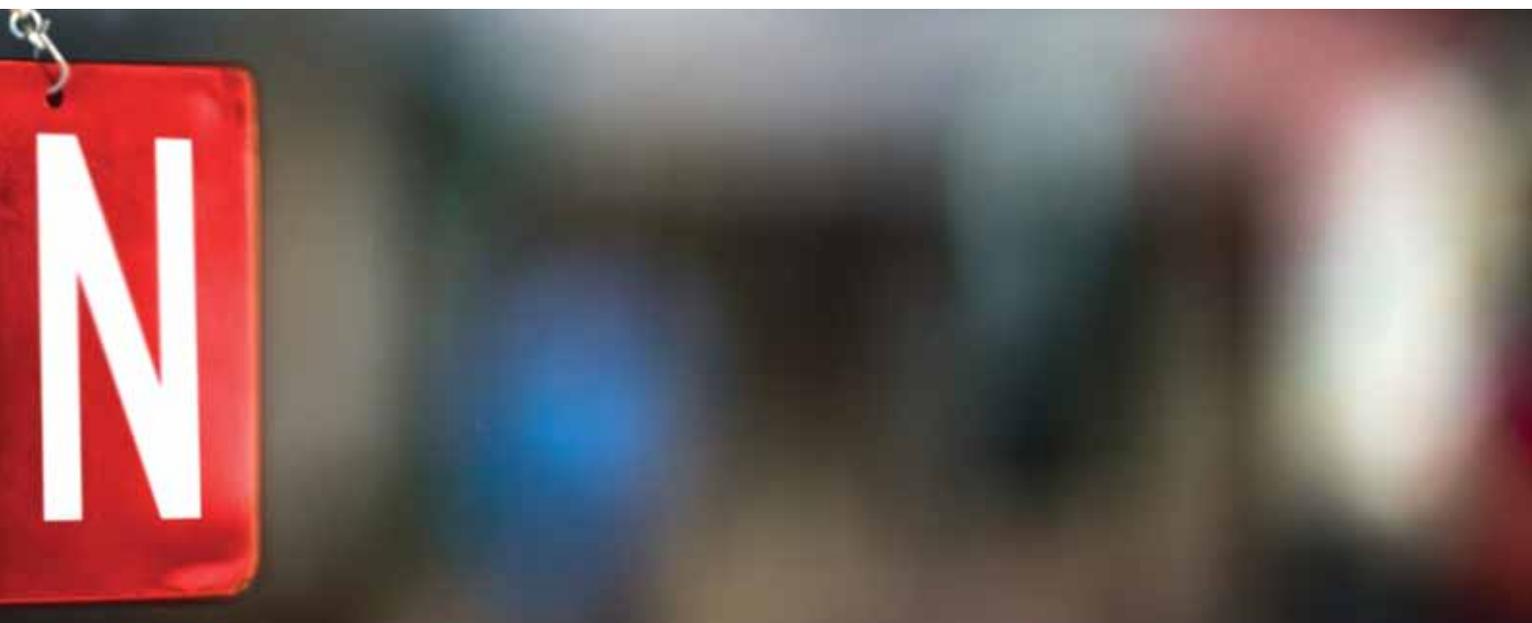
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Licensing exists to protect both consumers and businesses. Done well, it can support businesses to develop in a way that manages the risk of potentially dangerous or irresponsible activities and provides assurance to local residents.

But licensing frameworks have evolved in a piecemeal manner over many years, and the historic, fragmented and complex nature of licensing imposes unnecessary burdens on councils and businesses. Despite it being over 15 years since the Better Regulation Taskforce called for a reform of outdated licensing laws, many of the problems identified then are still unresolved.

‘Open for Business: Rewiring Licensing’ outlines the Local Government Association’s (LGA) call for full reform of the licensing framework. This would deliver a deregulatory approach that frees up business and council time while maintaining important safeguards for local communities and businesses.



Issue	Proposal
Licensing legislation is inconsistent, fragmented and sometimes outdated.	Government undertakes a comprehensive <b>review of licensing legislation to determine what can be scrapped, or amended and consolidated.</b>
Licensing is underpinned by multiple Acts of Parliament with regulations overseen by different government departments.	A reformed <b>licensing framework should be overseen by a single government department.</b>
Licensing has long operated on the concept of full cost recovery, ensuring the cost of operation is borne by businesses rather than taxpayers. This principle has been undermined by nationally set fees.	The Government should deliver on their overdue commitment to <b>localise alcohol fees.</b>
Not all licensing frameworks have clear objectives and do not allow relevant considerations to be taken into account.	Licensing decisions should be reached locally based on a broader set of <b>licensing objectives that includes the protection of public health.</b>
Businesses have to apply for separate licences for each licensable activity they undertake.  The frequency with which a licence must be renewed varies considerably, as does the amount of work involved in each renewal.  Licence appeal processes vary considerably.	Businesses should be able to apply to councils for <b>a single licence tailored to their business needs.</b>  The <b>licence for life should be consistently applied to all licences</b> , with clear mechanisms for addressing issues of non-compliance.  The process for <b>appeal should be transparent and consistent across all licences</b> , ensuring no applicant is disadvantaged.
Community involvement in licensing is patchy and often restrictive.	When granting licences councils should be able to <b>effectively consider local representations</b> , where there is a public interest.
Businesses are not always offered the same flexibility of payment options that are available to council tax payers and suppliers.	Government should ensure that councils have the legal flexibility to offer diverse payment options to businesses. Councils should <b>consider what more they can do to assist businesses, including direct debits and instalments.</b>

# INTRODUCTION



Councils are responsible for issuing more than 150 licences, consents, permits and registrations covering a diverse range of trades and activities. The most commonly known form of council licensing permits the sale of alcohol.

However, councils also issue registrations in relation to food premises and are responsible for licensing hackney carriages and private hire vehicles, pet shops, caravan sites, the sale and storage of petrol, performing animals and hypnotism performances.

Licensing can be defined as formal or official permission from an authority to do something (whether that is owning or using a specific item or carrying on a particular trade); in this paper, we use the term to refer to the collective set of licences, permits, registration and consents issued by councils. Licensing is not a bureaucratic exercise maintained by councils to generate income through licence fees; it exists to protect consumers and businesses.

Done well, it supports businesses to develop and thrive in a way that manages the risk of potentially dangerous or irresponsible economic and social activities harming individuals, businesses and communities. It provides assurances to residents about the businesses they engage with and boosts consumer confidence in an area.

Licensing is an integral part of councils' broader regulatory services. In line with the Local Government Association's (LGA) 'Open for Business' vision for local regulation, regulatory services are increasingly recognised as being at the heart of councils' approaches to economic growth; it is believed that over fifty per cent of a business's contact with a council takes place through regulatory services.

Officers working in licensing, environmental health and trading standards have regular interactions with businesses and can therefore have an important role in helping them become established and grow, at the same time as ensuring they adhere to important safeguards.



## ECONOMIC GROWTH IS BETTER SUPPORTED BY LOCALISED AND SIMPLIFIED REGULATION

Licensing also has an important role to play in helping councils shape the areas in which people live and work. Councillors, as democratic representatives of local communities, should be able to take licensing decisions that are in line with the preferred wishes of those communities.

However, this important work has grown up through a historic patchwork of centrally imposed licensing requirements introduced to tackle specific issues. While many are still relevant today, they are inconsistent, uncoordinated and overlapping. This creates an unnecessary amount of administrative bureaucracy for both businesses and councils as they have to apply for and process multiple licences that often contain the same basic information.

In this paper, we outline our call for full reform of the existing licensing framework. This call forms part of the LGA's broader Rewiring Public Services<sup>1</sup> programme, which sets out proposals to increase the quality and cost effectiveness of public services through comprehensive public service reform.

We believe that economic growth is better supported by localised and simplified regulation linked to councils' clearly defined visions for their communities and places.

In licensing, as in other areas of regulation, this means reviewing what exists to ensure that it serves the purpose it is intended to (and that this purpose is clear); that it is proportionate in terms of the risk it manages; and that it does not unduly burden either the businesses overseen within the licensing framework or the councils responsible for overseeing them.

This would deliver a deregulatory approach that nonetheless maintains important safeguards for communities and businesses.



**Councillor Sir Merrick Cockell**  
Chairman, Local Government Association

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<sup>1</sup> For more information visit: [www.local.gov.uk/campaigns](http://www.local.gov.uk/campaigns)

# A COMPLEX PICTURE - CURRENT LICENSING FRAMEWORKS

## Complex legislative foundations

Licensing currently operates on the basis of a complex maze of often historic legislation owned by a number of different government departments. This imposes burdens for government, councils and businesses and it is left to councils to try and join up these frameworks in a way that makes sense locally.

Licensing controls have been adopted in a piecemeal fashion over many years, typically to tackle very specific issues and often without reference to existing licensing frameworks. This acts as a barrier to joining up licensing approaches in areas of activity that naturally overlap (for example, serving alcohol and food). Some licensing legislation, including the 2003 Licensing Act, prescribes the precise form on which businesses or individuals must apply for a licence.

This prevents councils from developing single application forms for businesses that require licences for different activities, meaning that they may have to apply to different parts of a single council for multiple licences for the same business or premise. Additionally, this level of micro-management wastes resources, requiring that even minor changes to forms need to be put before Parliament.

Piecemeal licensing legislation also creates costs for central government, in terms of the volume of legislation to maintain and try to coordinate. As an example, alcohol licensing is overseen by the Home Office and legislation for entertainment is overseen by the Department for Culture, Media and Sport, but they are the subject of joint statutory guidance.

Therefore, when either department wishes to amend the guidance, it has to formally consult the other.

Alongside the sheer volume of licensing legislation, there are issues with the age of some licensing legislation, some of which has been on the statute for a century or more.

The Town Police Clauses Act 1847, for example, regulates black cabs outside London, while the Police, Factories etc (Miscellaneous Provisions) Act 1916 regulates charity cash collections.

Although legislation can and has been updated, having as its basis statute drafted before modern patterns of behaviour evolved or even existed does not seem to be a sensible starting point for 21st century regulation.

As an example of a more modern piece of licensing legislation, the 2003 Licensing Act brought together the licensing of alcohol, late-night refreshment and regulated entertainment. Arguments remain about some elements of the framework introduced by the 2003 Act and even this is experiencing added complexity as more and more forms of regulated entertainment are exempted from the Act.

But it is indisputable that it is more helpful to both businesses and councils to operate on the basis of a modern framework grounded in recent practice and behaviour.

## **National and local frameworks and the devolved administrations**

One characteristic of the current licensing framework is the degree of complexity in terms of licences that are mandated nationally and others where licensing requirements have been adopted locally in some areas but not others.

For example, licences to run a pet shop or riding establishment, be a scrap metal dealer or establish a caravan site are all mandated nationally, while licences for auction premises, massage and special treatments, street trading, hairdressers and street collections are only necessary if a council has chosen to adopt the requirement for a licence. Some councils want to license these activities and the law allows them to without burdening businesses nationally.

This is localist and deregulatory and we are extremely supportive of this approach. However, the list of activities that councils can 'opt in' to license is outdated and does not include modern activities that are now of concern to some councils (for example, sunbed use). Updating the legal framework for local licensing, and introducing future flexibility about the issues councils can license, would be helpful and reduce the demand for future Parliamentary time to address specific issues.

The devolved administrations are increasingly taking a divergent approach to their licensing schemes. Scotland and Northern Ireland have operated different licensing schemes for many years, while Wales continues to work in a way more comparable to England; both are subject to the 2003 Licensing Act.

Close consideration will need to be given to the requirements of the devolved administrations, and Wales in particular, as the proposals in this report are taken forward.

## **Licensing and planning**

Councils need effective powers to secure economically efficient use of land but also the ability to manage the social, environmental and aesthetic impacts on communities. In practice, however, the distinction between the role of planning and licensing in providing these functions is blurred.

This results in confusion to businesses and a perception of unnecessary duplication of control. It also means councils lack the means to deal with issues such as clustering in an efficient and effective way. Yet residents expect councils to have powers to influence the nature of land use and business activity in their areas.

Resolving these issues will require greater clarity about the distinction between licensing and land use planning in managing how business premises are used. As recent debates on the clustering of betting shops illustrate, neither the planning use class system nor licensing framework, operating individually or jointly, enable councils to effectively manage and mitigate the social impact and public protection aspects of business activity.

This is because use classes group together classes of activity that have a comparable economic impact on an area and licensing objectives are too narrow.



We need a further debate about how these issues can be disentangled to result in use classes that provide effective economic regulation and within them transparent local licensing options to manage the social and public protection impacts.

The distinction between planning and licensing functions needs to be clear, but it is also important that the functions are aligned operationally to provide a joined up and customer focused service to businesses. Many councils are already exploring opportunities to improve customer service for businesses in this area, for example by joining up planning, licensing and other advice at an early stage through pre-application advice services.

### Previous reviews of licensing

There have been several reviews of licensing schemes in recent times, from the Better Regulation Taskforce report that brought in the Licensing Act 2003, to the Law Commission's current review of Taxi and Private Hire Vehicle Legislation. The Penfold Review of 2010 considered the relationship between planning and licensing as part of a wider review, while many of the Focus on Enforcement and Red Tape Challenge reviews have also touched on areas of licensing.

However, these reviews have all looked at specific themes – whether alcohol and entertainment, taxis and private hire, or subject specific issues like scrap metal. There has been no attempt to look across the entirety of licensing schemes and related control mechanisms such as permitting and registrations.

This has missed a clear opportunity to learn from practical experience of other systems, but also to align them in a way that makes sense from the point of view of both licensees and administrators.

Some systems, such as the recent Scrap Metal Dealers Act 2013, have looked at and incorporated best practice from elsewhere, but there is much more than can be done to clarify our expectations of what a licence does, how it operates, and how we ensure fairness for businesses while reflecting the views of local residents.

➤ We believe that overall the legislation that underpins England's multiple licensing frameworks is unnecessarily fragmented and frequently outdated. This creates barriers that prevent councils from issuing licences as efficiently as possible, imposing burdens on both businesses and councils. There is an urgent need for a **comprehensive** review that identifies where legislation can be scrapped, amended or consolidated to create consistency in the frameworks underpinning licensable activities and deregulate where possible. A new licensing framework should subsequently be overseen by a single government department.

## Licensing objectives, council responsibilities and community involvement

Licensing is essentially permissive, with the presumption that a licence will be granted unless specific criteria are not met. These criteria can often be administrative and process-focused, with little scope to consider issues such as the appropriateness of a business to an area.

The Licensing Act 2003 and Gambling Act 2005 do have more strategic objectives which, if not met, provide grounds to refuse a licence application. However, while an improvement on the process-based approach, they are not without their own limitations. More recently, the concept of cumulative impact has been introduced to alcohol licensing, but this idea remains controversial and is often contested in the courts.

It comes as a surprise to many residents that councils and communities are so restricted in being able to influence the type or number of businesses that operate in their areas.

### **Licensing objectives**

Different licensing frameworks operate to different overarching objectives. The 2003 Act has four licensing objectives (the prevention of crime and disorder; public safety; protection of children from harm; maintenance of public order), while the 2005 Gambling Act has three (preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime; ensuring that gambling is conducted in a fair and open way; protecting children and other vulnerable persons from being harmed or exploited by gambling).

These objectives, broad in approach, but still clearly outlining the parameters for granting a licence, serve as a contrast to the majority of licensing frameworks that either do not have stated strategic objectives and/or where licence criteria are administrative and do not provide scope to consider any local context when granting a licence.

Councils want to promote economic growth and support businesses as much as possible. But they are also entrusted with a much wider range of responsibilities that are not reflected in the current licensing objectives, which have not kept up with the delivery of local services and are consequently too narrow.

One example is councils' public health responsibility. Excessive alcohol consumption is estimated to cost the NHS £3.2 billion a year, with additional costs falling to social services, police and businesses. In 2010/11 there were 198,900 hospital admissions directly attributable to alcohol, an increase of 40 per cent since 2002/3.

It is recognised that because health impacts are linked to consumption and the availability of alcohol, there is a need for public health bodies to play an active role in licensing activities; therefore, under the 2003 Act, local health bodies are able to contribute to the licensing process through being a 'responsible authority'.

Yet bizarrely, while this link is recognised, there is no scope for health bodies or councils to oppose or modify an application on health grounds, since the licensing objectives have not been amended.



This prevents democratically elected councillors from reaching decisions based on the health advice of local health experts, despite local health bodies nominally being involved in the licensing process and even where there is evidence of a clear risk to health. Public health is a complex matter when applied to the licensing of individual premises, but it is important that it is considered and the current approach is ineffective.

Economic objectives too, can be frustrated by restrictive licensing schemes. Studies have shown that the greatest footfall in high streets is generated by a diverse offer of retail, leisure and cultural activities located within close proximity. Recognition that licensing can play a place-shaping role, reflected in broader licensing objectives, could help stimulate local economies and increase the desirability of places.

### **Communities and residents**

Communities and residents have a keen interest in the nature and makeup of their area. For many, it will be why they chose to live and work there. Councils listen to the views and needs of their residents on a daily basis, whether through formal consultation measures or informal discussions. This underpins a council's democratic accountability. However, communities can find themselves excluded from being able to meaningfully influence licensing decisions.

Councils have made great strides in providing advice and guidance for individuals and community groups on making licensing representations, but it can still be difficult to meet the evidential basis required, which prevents councillors from taking into account the views and concerns of local residents.

We believe they should be given a greater say in the way their communities look and feel, in the same way that they are able to contribute to wider planning strategies and planning decisions.

➤ It is right that the presumption of licensing should be towards enabling businesses and economic growth; but the current system is too restrictive in terms of the powers given to local people and their councillors to reach local decisions that are right for their areas. There is scope for a broader set of licensing objectives that better reflect councils' diverse range of responsibilities and allow residents to have a greater say.

### **Licensees: the business perspective**

We know that licensing isn't typically the biggest regulatory burden businesses are concerned about<sup>2</sup>. Equally, we know that many businesses are supportive of licensing frameworks for the oversight they provide and the additional validation they imply for licensed businesses. This can be seen in the recent unfavourable response from industry to the Home Office's proposal to scrap the personal alcohol licence, or from the scrap metal industry's support for new licence controls and fees in their industry. In the 2012 Business Perceptions Survey<sup>3</sup>, 80 per cent of businesses reported that they would be concerned about the impact on their relationship with their customers if they were not compliant with relevant regulations.

<sup>2</sup> In a 2011 FSB survey, 8 per cent of small businesses identified local authority licences as the most challenging area of regulatory compliance. Tax administration, health and safety and employment law were cited as the biggest challenges.

<sup>3</sup> [http://www.nao.org.uk/wp-content/uploads/2012/06/Business\\_Perceptions\\_Survey\\_2012.pdf](http://www.nao.org.uk/wp-content/uploads/2012/06/Business_Perceptions_Survey_2012.pdf)



However, businesses have understandable concerns about some aspects of licensing, including: the number of different licences or registrations they are required to seek; the length of some of these licences and the frequency or basis on which they have to be renewed; the ease with which they are able to apply for and pay for licences, and the level of licence fees; and the approach that councils take to overseeing licensed businesses.

We recognise that local variations in the application of licensing frameworks are also a concern for businesses that operate across different council areas. But we believe there is a strong case for such variations, so that licensing decisions are rooted in local circumstance and need. We also believe that local variations can often help support smaller, more local businesses (with localised street trading schemes providing a good example of this).

Our reform proposals try to take account of this challenge and guard against inconsistency however, by recommending a clear national framework in which to make local decisions and calling for greater flexibility on the administrative issues that can cause most difficulty for national businesses.

➤ **There is mutual recognition that badly designed licensing requirements do not work for either businesses or the councils having to enforce them and can divert the resources of both into unnecessary bureaucracy. This could be addressed through licensing reform.**

## Current costs of the system

It is difficult to establish the overall cost of council operated licensing frameworks across England. For councils, these costs include the costs of running licensing frameworks; for business, licensing costs include licensing fees and the time required to apply for and comply with licensing requirements.

Licensing fees are intended to be set on a cost recovery basis, so councils should in principle be able to recover the costs of running the licensing system. In practice, the fact that our biggest licensing system – the Licensing Act 2003 – has fees that are still set nationally means that there is often a shortfall in the funds that are recovered, creating a council subsidy of licensed industries.

The Government's independent review of licensing fees, chaired by Lord Elton, found that between 2004/05 and 2009/10 there was an estimated deficit of around £100 million, equating to just under £17 million a year.

It is much harder to identify the total costs of licensing on businesses. Expenditure figures for 2012/3 show that councils received £152 million income from businesses for licence fees on alcohol, entertainment and taxis.

## THERE IS A COMPELLING CASE FOR A PROGRAMME OF LICENSING REFORM

However, although there is an array of survey data on business perceptions of regulation – for example, the proportion of businesses agreeing that issues such as completing paperwork and forms ( 60 percent ) and providing the same information more than once (66 percent) are a burden<sup>4</sup> – we are not aware of any previous attempt to quantify the cost to businesses in terms of the loss of productive time from complying with licensing requirements specifically.

We have been told that some large businesses have to employ a dedicated person to keep track of the different renewal dates that their licences require. This is costly and burdensome for businesses, detracting from their core focus of growing their business and serving their customers and potentially has a knock on effect for the public purse, in terms of lower business rate growth and taxable revenue.

If the cost impact of fragmented licensing controls, unnecessary bureaucracy and related regulation were equal to just 0.1 per cent of annual turnover in the hospitality sector (an industry subject to a significant proportion of licensing controls and equal to £90 billion), this would equate to £90 million, offering scope for potential savings if these issues could be addressed through licensing reform.

➤ We believe there is a solid business and economic case for licensing reform. It is unlikely to be the case that licensing reform will generate significant efficiency savings for the public purse, since licensing fees are set on a cost recovery basis, and most council licensing functions are already small. However, licensing reform provides an opportunity to free up council officer time to focus on better targeted, risk based activity rather than administrative processes and to free up business time to focus on running and growing successful businesses.

**In summary, we believe there is a compelling case for a programme of licensing reform that develops a consolidated, modernised legislative platform grounded in modern patterns of consumer behaviour, business practice and council responsibilities.**

<sup>4</sup> [http://www.nao.org.uk/wp-content/uploads/2012/06/Business\\_Perceptions\\_Survey\\_2012.pdf](http://www.nao.org.uk/wp-content/uploads/2012/06/Business_Perceptions_Survey_2012.pdf)

# WHAT SHOULD A REFORMED LICENSING FRAMEWORK LOOK LIKE?

If we were to design a new licensing framework, covering all licensable activities, we would not create the complex mass of legislation and rules we have now. In line with our Rewiring Public Services proposals, the LGA believes that government must be bold and ambitious in redesigning public services. This means taking the brave approach to start from scratch, building in elements of the current system that work well but removing those elements that are obsolete, inefficient or contradictory.

We set out below an overview of our vision for a reformed licensing framework and some of the issues to be considered in designing it. The following section outlines the steps we believe are necessary to achieve it.

## Clarity of purpose

At the beginning of this report, we stated that licensing is not an end in itself. It exists to mitigate the risks of unfettered access to certain types of goods or activity; its primary purpose is to prevent the harm or detriment that could arise from them<sup>5</sup>. Licensing decisions are therefore essentially judgements of risk and licensing frameworks and requirements must be proportionate to the risk in question.

A risk based judgement must at the outset consider the acceptable level of personal responsibility within the framework. There is a balance to be struck between an individual's responsibility for regulating their own behaviour and the state's responsibility for ensuring that those who cannot responsibly regulate their own behaviour are largely prevented from causing harm to others, as well as themselves.

<sup>5</sup> Other benefits, such as the perceived validation from holding a licence, although welcome, are secondary to this key purpose.

An important issue in reforming licensing is to consider whether a risk (or the effects of the risk coming to pass) can be offset without the need for a licence. For example, if the risk of an activity is, say, littering (which might occur as a result of leafleting) and there are already powers to address littering offences, does issuing a licence for the activity add any extra value? Does the licence in itself act as a deterrent to the problem it is seeking to prevent?

A related issue is the question of the process followed in order to grant a licence. A recent government consultation noted that 'there is a reasonable expectation that a licence issued by a public body to do something... will only be granted to a person competent to do that thing or run that business<sup>6</sup>.' We share this view of public expectations. Clearly, any check or oversight should be risk based and may be minimal for some businesses, but if no such oversight is built into the issue or maintenance of the licence, it is questionable whether there should be one in the first place.

These are key issues, because it is important that all stakeholders – businesses, councils, consumers, communities – understand the basis for licensing, what licensing exists to do, and what licensing fees pay for. In redesigning a licence framework, therefore, a starting point must be to consider:

- the risks that are being managed
- whether risk or impact can be mitigated or offset other than through a licence
- the additional checks or oversight provided through the award of a licence.

<sup>6</sup> Department for Communities and Local Government (DCLG) Park Homes discussion paper, 'Site licensing: changing the licence holder' (November 2013)



## Determination of licensable activities

Clarifying and agreeing the purpose of licensing provides a basis for determining goods or activities to be licenced in a reformed framework.

A reformed licensing framework would also need to be 'future proofed' and incorporate a mechanism for adapting to emerging risks and changing patterns of behaviour. This would mean activities that do not currently require a licence (or may not even exist yet) could be incorporated into the licensing framework as the need arises; or, equally, removed if habits change.

As examples of this, over the past three decades we have seen significant shifts in society's attitude to, say, wearing seatbelts or our expectation about where people should be able to smoke. It is unthinkable to many that people would once have been able to smoke in an office, on a train or even, more recently, in pubs. As behavioural norms change, it may be possible to reduce the need for licensing of certain activities, and the licensing framework should be able to accommodate this.

## A new framework

We are calling for a clear, consistent framework governing licensed activities. We believe the 2003 Licensing Act provides a useful model in terms of providing a national framework that is managed and applied locally. We would also incorporate additional elements of local flexibility enabling individual councils to license activities that pose a particular risk in their areas.

The framework should incorporate the following principles:

### **Local flexibility, democratic accountability and transparency**

Local democratic accountability must be at the heart of a new licensing framework. As stated, we understand the value placed by businesses on standardisation and national consistency. We believe that this can be provided through the development of a consistent national framework for licensing.

But the framework must continue to operate and licensing decisions must still be taken at a local level by councillors who are closely connected to their local neighbourhoods, who are trusted by them to reach the right decisions about their communities and who can be held to account by them.

We believe that there are a number of activities (notably the sale of alcohol) that are recognisably of such importance that they should be automatically subject to licensing controls. But we believe there are others, as now, where individual councils will reach their own decisions about whether a licence is a necessary requirement in their area.

A reformed licensing framework should retain the flexibility for councils to be able to respond to complaints or local risks and bring activities into the licensing framework if the evidence suggests that is the right approach for their area. Equally, there may be times when the evidence indicates that it would be appropriate to remove activities from a local licensing framework.



## LICENCES SHOULD REFLECT THE WAY THAT BUSINESSES OPERATE, NOT HOW GOVERNMENTS HAVE INTRODUCED ACTS OF PARLIAMENT

Local government is the most open and transparent part of the public sector and we recognise that selective licensing needs to be done with the consent of residents and input of businesses. Parliament has recognised that councils already have considerable experience of conducting open enquiries into complex issues, most recently by giving them the power to introduce late-night levies, early morning restriction orders and cumulative impact zones.

This openness and responsiveness is maintained both through the ballot box and the regular scrutiny investigations that councils conduct into topics of local importance. The measures we propose will simply extend and apply these principles to other issues of local concern.

These in-built safeguards are supplemented by the right of appeal to the magistrate's court or, in some cases, to judicial review or the Local Government Ombudsman. The right to appeal should be embedded in a proportionate way to the new licensing framework, and we believe there could be consideration of whether the Magistrate's Court remains the appropriate route.

We believe that on matters of process, businesses should be encouraged to refer issues to the Local Government Ombudsman in the same way that residents do. Our work has revealed a lack of awareness of this option and work is needed by both councils and the Local Government Ombudsman to address this.

### **Licensing objectives**

We propose that all local licensing decisions should be reached with regard to a common set of nationally set licensing objectives, reflecting that licensing exists for the common purpose of mitigating risk and preventing harm from occurring.

However we believe that the licensing objectives must be expanded to reflect the full range of council responsibilities. This would enable councillors to reach licensing decisions that balance the existing licensing objectives and goal of economic growth with an objective reflecting councils' public health responsibilities. We also believe that the concept of cumulative impact could be a consideration in relation to all licensing issues, not just alcohol.

We also need a further debate about how planning and licensing operate alongside each other through planning use classes that provide effective economic regulation and licensing objectives that enable councils to manage the social and public protection impacts of certain types of economic activity.

### **A single licence per business**

Licences should reflect the way that businesses operate, not how Acts of Parliament have been introduced by multiple government departments over the years. It is inefficient and unwieldy for a business to have to seek multiple licences or permissions from the same organisation; businesses should be able to go through a single application process leading to the award of a single licence tailored to their business needs.



Our proposal is that businesses applying to local councils for licences should be able to specify as part of the application process what their licence should cover, for example food registration, a premises licence and the permission to have tables and chairs on the pavement.

Providing that an application meets the relevant information requirements, a licence should subsequently be awarded in respect of all of these activities. The licence fee payable would be determined by the relevant activities covered by the licence; all licence fees should be based on local cost recovery and be fully transparent.

This may require different ways of working in councils and particularly in two tier areas where relevant functions may occasionally be split across different authorities. It implies closer coordination between different teams and potentially a single point of contact to liaise on combined licence applications. But we believe it is a realistic ambition for councils and businesses. A longer term, if more challenging objective, would be to join up applications for licences and permits from different parts of the public sector.

### **A licence for life**

An effective licensing system must be able to address issues of non-compliance, with the ultimate sanction being the withdrawal of a licence. If these powers are in place, there is no obvious need for licences to be subject to full renewal processes: responsible operators should be able to operate in the certainty that a licence will be maintained without the need for repeated applications over time.

This reflects the fact that the vast, vast majority of businesses do not set out to breach relevant requirements or break the law.

While recognising the arguments against, we are on balance supportive of the principle of a licence for life for business licence holders, with clear and enforceable measures for withdrawing a licence if it becomes necessary, as embodied in the 2003 Act's approach to personal licences or in driving licences.

A simple annual update process would enable councils to confirm existing licence details and seek a fee for the maintenance of the licence, which would fund compliance activity. Proposals to implement the concept of mutual recognition of licences across the UK will need to be considered as part of this reform.

### **A simple administrative approach**

In addition to a simple annual confirmation of details, we believe that there is more that can be done to simplify the administration of licences, in line with the 2006 EU Services Directive. For example, businesses should always be able to apply and pay for licences online. They should also have the same flexibility that council taxpayers already have, in terms of flexibility over payment dates, payment by instalments, direct debit, etc.

# NEXT STEPS TO DELIVERING LICENSING REFORM

We have identified a range of opportunities for licensing reform through our survey of councils and engagement with business stakeholders. These fall into three broad categories:

- changes that councils can and are implementing now
- government work to identify legislative changes
- actions that require further development and research.

## Councils

Councils are keen to make what changes they can and a number have already sought to improve licensing, within the constraints of the existing framework. Several of the Better Business 4 All areas, supported by the Better Regulation Delivery Office, are exploring this issue and the LGA has identified a number of additional councils who wish to explore licensing issues specifically. This work will continue to shine a light on new and improved ways of working.

### Councils can:

- Continue thinking about how different services can join up (eg, licensing and planning; licensing and environmental health) and coordinate engagement with the businesses they work with to design services around the customer. This includes routinely sharing information that is relevant to them and referring or signposting a business or individual to another council team.
- Make progress on simplifying the administrative elements of licensing. Residents have considerable

choice and flexibility when making payments to a council, including choosing the date of payment and selecting the method of payment; they are also typically notified when payments are due. Businesses should have access to these same flexibilities, recognising that cash flow is critical to small businesses and that larger businesses may have multiple premises to cover and payments to make.

- Improve and enhance their communications with businesses, particularly online, which many businesses will rely on as a primary source of information. Businesses need to be able to access relevant information if they are to comply with the law; in line with the Regulators' Code, councils should make this as easy as possible.

## Government

Councils can only go so far before they come up against inflexibilities, barriers and restrictions in national legislation. Some of this is easily addressed, such as the removal of the prescribed forms for alcohol licensing, but much will require greater work and resources from government if we are to achieve meaningful change rather than just tinker around the edges.

The government should initiate an overhaul of existing licensing legislation and related legislation as it pertains to licensing. A review should assess licences against the principles set out in this document and then assess what amendments are needed to bring each licence into a consistent framework.



This is comparable to the recent powers of entry review coordinated by the Home Office, where each department has assessed the powers for which it is responsible against criteria developed by the Home Office.

**Government should:**

- Establish a licensing reform working group made up of consumer, business, council and government representatives to oversee the development and implementation of licensing reform. This approach could be mirrored locally, to ensure local licensing regimes are administered through a genuine partnership approach.
- Establish a clear picture of the breadth of licensing legislation, including permitting and registration systems and frameworks that exist through locally adopted Acts.
- Review the legislation to identify anomalies and establish what should be scrapped or reformed and consolidated. If it is determined that certain licences continue to require a standalone approach, government should consider ways it can standardise the underpinning principles. A draft list of core pieces of legislation to be reviewed is in the Annex to this document.
- Review related legislation to consider the scope to remove barriers to coordinated working with other areas.

- Develop a new framework for licensing in line with the ideas put forward in this document in terms of: a broader set of core licensing objectives; local flexibility to shape licensing frameworks based on local need; licence length; the principle of a single licence per business.

There are already pieces of legislation to provide a sound basis for this work. We have spoken in support of the general design of the Licensing Act 2003, but we also have an established and robust piece of legislation in the Provision of Services Regulations 2009 which sets out accepted principles for when and how a licensing regime should be introduced. We believe this could form an effective basis for a consolidated national framework for licensing, including more effective delegation of place-shaping powers to councils.

The Local Authorities (Functions and responsibilities) (England) Regulations 2000 also provide a clear framework for putting transparency and accountability at the heart of licensing systems. However, while a sound starting point, these regulations also contain anomalies that will need to be addressed in the wider review before they can be included in a consolidated framework.



## Business

The role of business in regulation, for far too long, has been that of the person being 'done unto'. In fact, businesses are more likely to embed safe ways of working into daily practice if they feel able to ask for assured advice, and able to seek support that reflects their business needs. Over the past few years, councils have made significant strides towards creating this environment. Initiatives such as Better Business 4 All, the Focus on Enforcement reviews, and the work going on every day in councils contributes to this shift. But we need businesses to be active participants in this.

### **Businesses can:**

- Be prepared to provide direct feedback and, if necessary, challenge to officers and councillors where they encounter practices they believe are excessive and need improvement. For their part, councils should guarantee a fair hearing and a safe forum for doing so.
- Recognise that councils have wider responsibilities and duties than the promotion of economic growth, notably public health and wellbeing, and that these may sometimes need greater weight to be attached to them. Businesses are not being victimised where this is the case.
- Provide good quality information and applications. Submission of poor quality information is one of the main reasons for applications being returned, delayed or rejected. Taking the time at the outset to submit a quality application is in the interests of both businesses and councils and minimises costs for both parties.

## Local Government Association (LGA)

The LGA, as the voice and improvement arm of local government, has a key role in supporting this work, alongside the Better Regulation Executive and Better Regulation Delivery Office, as well as in making connections between various pieces of reform work.

### **The LGA will:**

- Provide training, advice and support to help councillors fulfil their leadership role in licensing, through our online councillor training module and regular workshops and events.
- Work with licensing officers to consider the training and development requirements to support licensing reform.
- Continue to support councils to explore how to improve coordinated working across licensing and related services to improve the support provided to businesses. In 2014, we will be providing grants to a small group of authorities to pilot different approaches to improving business support through regulatory services. The findings from these pilots will be shared across all councils.
- Promote a debate at national level about what is needed to ensure land use planning and local licensing systems operate effectively in providing economic regulation and managing social and public protection interests. Continue the development of best practice guidance on pre-application planning advice services, reflecting the desirability of involving related services such as licensing at an early stage.
- Assist and support government in progressing detailed licensing reform proposals.

# ANNEX 1:

## LICENSING

### 'SNAPSHOT'

The LGA surveyed 15 councils (comprising a mix of different sized unitary, district, metropolitan and borough councils) on a range of licences, permits and registrations issued by them over the past three years.

The survey found that the councils typically registered more food premises than any other type of licence or permit. However, this was closely followed by personal licences for the sale of alcohol and taxi and private hire vehicle licences. In some areas, but not all, one-off licences for charity street collections and temporary event notices could also be required in large numbers.

Many council systems did not enable them to state how many businesses held multiple licences for different activities, for example where a business is registered as a food business, but also holds a licence for the sale of alcohol.

However, there was a consensus that businesses in the hospitality sector, particularly pubs and restaurants, would hold the greatest number of licences, permits or registrations.

Councils were asked whether any existing licences provided a good model for licensing reform. There was a general consensus that the Licensing Act 2003 is, broadly, a good model for future licensing schemes, combining local flexibility and accountability with national consistency.

Councils were also asked which licences were the most difficult to administer. Taxi and private hire vehicle licences, and selective licensing for houses of multiple occupation, were most commonly identified.

Respondents were clear that the schemes were worthwhile and brought public benefit, but that the bureaucracy was disproportionate to the level of public benefit secured and could be simplified.

The financial implications of operating multiple licensing schemes were also considered. The responses illustrated the need for localised setting of fees to recover the costs of the licensing system.

While the majority of systems reviewed operated on this basis, it is ironic that the 'exemplar' system – the Licensing Act 2003 – does not do so. The snapshot revealed that the costs of the system varied from break even in two councils, to a deficit of around £2 million per annum in one council. The majority of councils reported deficits in the region of £40,000 - £50,000 per annum.

This financial discrepancy is exacerbated by responses showing that between one third to one half of premises with alcohol licences needed informal advice and guidance to comply with the law. These figures are higher than is suggested by the limited national figures available. Dealing with these queries can often be expensive and time consuming, although this can be offset against the disruption caused by formally prosecuting a business.

A further piece of work could explore whether the true cost of this support can be adequately recovered through the existing fee-setting arrangements, which often focus on a process-basis rather than a compliance-basis.

Respondents suggested a number of systems that could be reformed:

**Simplifying licences for business:** The locally established tables and chairs licences were felt to be ideal for incorporating into a premises licence, with the Highways Authority becoming a responsible authority. This would remove the need for the business to apply for a separate licence and align the renewal period with that of the longer licence.

**Strengthening oversight:** Several respondents felt that inspection of food premises should take place before the business started trading, a view supported by the recent Which? report 'Ensuring consumer-focused food law enforcement'. There was also a view that hairdressers, tattooists and related professions were subject to varying degrees of professional checks and that controls could be strengthened.

**Increasing local flexibility:** One respondent noted that under the 1964 licensing regime the Magistrate's Court granted Special Orders of Exemptions for Bank Holidays and special occasions such as the World Cup. These exemptions are now sought on a national basis from the Home Office. This power could be given to councils and would create greater flexibility for local businesses that had proven themselves to be responsible operators; as well as addressing a number of comments received about the burden, and lack of resident input, relating to temporary event notices.

**Diversifying enforcement options:** Councils are increasingly making use of informal advice and support options, as shown above, but they lack a similarly flexible approach to enforcement. Formal prosecution can be the first method available under some schemes. Respondents suggested that fixed notice penalties would be a quicker and more effective way of taking action for both the council and business concerned. Food and street trading offences were felt to be particularly suited to this approach.

**Increasing consistency:** The LGA has been approached by the All Party Parliamentary Group on Skin who, supported by several councils, are proposing a licensing scheme for sun-beds. A similar scheme is in operation in Wales. The Local Government Miscellaneous Provisions Act (1982) introduces the option for councils to locally license massage and special treatment facilities, tattooists and similar activities. However, sun-beds were not included as the technology had not then been developed. A more flexible system of localised licensing would allow these developments to be incorporated without using parliamentary time.

## ANNEX 2:

# SELECTED LIST OF LOCAL AUTHORITY LICENCES, PERMITS, CONSENTS AND REGISTRATIONS

Animal boarding establishment licence	Animal Boarding Establishments Act 1963
Pet shop licence	Pet Animals Act 1951
Scrap metal dealer licence	Scrap Metal Dealers' Act 2013
Auction premises registration	Greater London Council (general Powers) Act 1984 Part VI
Occupation of the road in connection with building work	Highways Act 1980
Sex shop and cinema licence	Local Government (Miscellaneous Provisions) Act 1982
Massage and special treatment premises licensing	Byelaw under Local Government (Miscellaneous Provisions) Act 1982
Food premises registration	EC Regulation 852/2004 (Food Premises)
Street trading licence	Local Government (Miscellaneous Provisions) Act 1982
Skip licence	Highways Act 1980, Section 139
Market stall licence	Local Government (Miscellaneous Provisions) Act 1982

Club licensing	Licensing Act 2003
Street collection licence	Police, Factories etc. (Miscellaneous Provisions) Act 1916
House to house collection licence	House to House Collection Act 1939 and the House to House Regulations 1947
Car boot sale authorisation	Local Government (Miscellaneous Provisions) Act 1982
Tattooists, piercing and electrolysis licence	Local Government (Miscellaneous Provisions) Act 1982
Second hand dealers	Local Acts apply
Hairdresser registration	Local Acts apply
Skip operator licence	Highways Act 1980, Section 139
Riding establishment licence	Riding Establishments Act 1964
Zoo licence	Zoo Licensing Act 1981
Cooling tower notification	Notification of Cooling Towers and Evaporative Condensers Regulations 1992

Pleasure boats	Public Health Acts Amendment Act 1907 Section 94	Camp site licence	Public Health Act 1936
Ability to place tables and chairs in the road	Highways Act 1980, Section 115B /115E	Hypnotism permit	Hypnotism Act 1952
Caravan and camping site licence	Caravan Sites and Control of Development Act 1960	Environmental permitting	Environmental Permitting (England and Wales) Regulations, 2007
Application to use street or pavement space for displays	Highways Act 1980, Section 115B /115E	Safety certificates for regulated stands at sports grounds	Part III of the Fire Safety and Safety of Places of Sport Act 1987 (c.27)
Busking licence	London Local Authorities Act 2000	Food premises approval	Food Hygiene (Wales) Regulations 2006 / Regulation (EC) No 853/2004
Petroleum storage licence	Petroleum (Consolidation) Act 1928 as amended	Massage and special treatment, therapist registration	Byelaw under Local Government (Miscellaneous Provisions) Act 1982
Safety certificates for sports grounds	Safety of Sports Grounds Act 1975 (c. 52)	Approval of premises for civil marriage and civil partnership	Marriage Act 1994
Weighbridge operator certificate	Weights and Measures Act 1985	Consents for leaflet distribution	Clean Neighbourhood and Environment Act 2005
Premises licence	Licensing Act 2003	Licenses and consents for structures over, along and under the highway	Highways Act 1980, Sections 176-180
House in multiple occupation licence	Housing Act 2004		
Temporary event notice	Licensing Act 2003		
Performing animals registration	Performing Animals (Regulation) Act 1925		

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