Home Office

Additional Guidance for health bodies on exercising functions under the Licensing Act 2003

This good practice guidance should be viewed as indicative and may be subject to change. The content of this guidance broadly reflects but is not the statutory guidance (or any part of the statutory guidance) issued by the Secretary of State under section 182 of the Licensing Act 2003. The latest statutory guidance to be issued under section 182 of the Licensing Act 2003 and laid in Parliament is available on the GOV.uk website.

General

Health bodies have been able to act as responsible authorities under the Licensing Act 2003 since April 2012. Health Bodies are Directors of Public Health in England (since April 2013[1]) and Local Health Boards (LHBs) in Wales.

As responsible authorities, health bodies must be fully notified of licence applications. If the licence application is made electronically it is the responsibility of the licensing authority to ensure that each responsible authority receives a copy of the application. If the licence applicant submits any part of the application in writing, it is the applicant's responsibility to ensure that each responsible authority receives a copy of the application.

In their role as a responsible authority health bodies are entitled to:

- Make relevant representations to the licensing authority relating to new licence applications and major licence variations;
- Request that the licensing authority review an existing licence;
- Make representations to the licensing authority regarding the potential cumulative impact of an application in an area where there is a special policy in place regarding cumulative impact.

Representations must be considered relevant by the licensing authority (see Chapter 9 of the statutory guidance – link below) including that they relate to one or more of the licensing objectives.

Familiarisation with the process

Those areas in England and Wales where the process is working most effectively are those where there are effective links between health bodies and licensing authorities and where the health body has a good understanding of the licensing process.

[1] The Health and Social Care Act 2012, which came into force in April 2013, moved responsibility for public health into local government. The changes saw the abolition of PCTs and the role of responsible authority for health being taken up by Directors of Public Health in England (whilst LHBs remained in Wales).

To ensure health bodies are able to act effectively as a responsible authority they should:

- have effective links with the local licensing authority and be clear about what the licensing authority expects from representations;
- understand the fundamental principles of the Licensing Act 2003 and the role that they can fulfil in the licensing process;
- be familiar with their local area's statement of licensing policy
- have appropriate data sharing protocols in place to ensure the availability of relevant health data to support representations.

Recommendations on best practice in relation to each of these points and further sources of information are outlined below.

Establishing links with the local licensing authority

The key to ensuring that the health body can effectively fulfil its role as a responsible authority is through maintaining good links and regular contact with the licensing authority. This should include discussions between the health body and licensing authority on the licensing authority's expectations regarding applications and what they will find most useful. Wider discussions with police and other Community Safety Partnership partners are also encouraged. Some areas have groups or forums in place which bring together those in the area with responsibilities in relation to licensing, for example regular meetings attended by all responsible authorities to discuss current licensing applications. In some cases existing dedicated forums such as community alcohol partnerships can also be used as a vehicle for wider discussions.

Fundamental principles of the Licensing Act 2003

Health bodies should refer to the statutory guidance issued under section 182 of the Licensing Act 2003. This guidance is primarily issued for licensing authorities, but provides further detail on all of the licensing processes and should help to address any more detailed questions that health bodies may have.

https://www.gov.uk/government/publications/revised-guidance-issued-under-section-182-of-the-licensing-act-2003

Key messages that should be reinforced in relation to acting as a responsible authority under the Licensing Act 2003:

- **Being a responsible authority is an opportunity rather than an obligation:** Health bodies receive copies of all licence applications as a requirement of the Act but don't have to make a representation in relation to each application. Health evidence may not be relevant for each one or a local area may not yet have appropriate evidence available to support a representation. Health bodies need to determine for which applications or variations they have grounds to make representations. Health bodies can also make representations about local licensing policies and cumulative impact policies at the relevant times

- **For a health body to make a relevant representation, the representation must be linked to one or more of the licensing objectives.** Licensing authorities must make their decisions with a view to promoting the licensing objectives, which are:
    - The prevention of crime and disorder
    - The prevention of public nuisance
    - Public safety
    - The protection of children from harm

- It should also be noted that public safety only concerns the physical safety of people using licensed premises and not wider alcohol-related health harms such as liver disease, alcohol-related deaths and other issues around the promotion of public health. Any representation made therefore needs to focus on the physical safety of individuals, such as alcohol-related accidents and injuries.

Local statements of licensing policy

Each licensing authority is required to produce and publish a statement of licensing policy at least every five years. This statement of licensing policy will be available from the licensing authority's website and will be a valuable source of information for health bodies on the licensing authority's approach to licensing in the area. It will also include reference to any specific local policies, such as whether the licensing authority has introduced a cumulative impact policy (CIP) in its area. Before introducing a CIP the licensing authority must consult with those specified in section 5(3) of the 2003 Act including the local health body. Health bodies are encouraged to use such opportunities to help shape the local statement of licensing policy.

Data sharing and ensuring representations are evidence-based

In some areas, the main barrier to health bodies acting effectively as a responsible authority is that the evidence that they need to support a representation is not routinely collected or available in their area. It is likely that representations from health bodies will often relate to public safety, which includes the prevention of accidents and injuries and other immediate harms that can result from alcohol consumption such as unconsciousness or alcohol poisoning. For example, drunkenness can lead to accidents and injuries from violence resulting in attendances at emergency departments and the use of ambulance services. In some cases, these will also involve breaches of the objective to prevent crime and disorder. In respect of the protection of children from harm there is a duty to protect them from moral, physical and psychological harm and therefore lots of potential for health bodies to add value. Under 18 alcohol-related A&E attendances may relate to the objective to protect children from harm and underage or proxy sales of alcohol will have implications for both the crime and disorder and protecting children from harm objectives. Health teams can provide supporting evidence, for example in relation to the effects that drinking alcohol has on the adolescent body.

Although less obvious, health bodies may also have a role to play in the prevention of public nuisance. They might for example hold data on the physical and psychological effects of noise and light pollution late at night from licensed premises. This could include cases of sleep deprivation caused by people congregating outside licensed premises making lots of noise or by bright strobe lighting emanating from a bar in a residential area.

When making a representation, the health evidence will need to relate to a specific premises or group of premises in a particular area such as a cumulative impact zone.

Some areas will already have data sharing protocols in place that could provide relevant information. Areas that don't have effective data sharing protocols in place may want to consider how to establish these.

As part of the Government commitment to require hospitals to share non-confidential information on gun and knife crime with the police, the Department of Health has promoted College of Emergency Medicine guidance for information sharing to reduce community violence, based on the 'Cardiff Model'. This sets out the importance of sharing non-personal data with the police, particularly core information on the date, location and type of assault. It highlights the important role of senior clinical, police and local authority leadership in promoting active use of the intelligence to target policing and tackle problem premises. Such action may include licence reviews.

The guidance on setting up data sharing protocols, including case studies from some local areas is available at the following links:
http://www.alcohollearningcentre.org.uk/eLearning/violence_e-learning/

http://cs1.e-learningforhealthcare.org.uk/public/IBA/IBA_01_007/CEM_final_guidance_The_Minimum_Dataset.pdf

The above guidance relates to reducing violence more generally but some of the case studies (for example, Addenbrookes and University Hospital of Wales) mention licensing specifically.

Health colleagues may also wish to look at the local health data they have and see how it can be broken down to give a more detailed local picture and how this can be presented in a way the licensing authority would find helpful.

Further information

The first point of contact for health bodies with any queries should normally be their local licensing authority.

Further detailed information on how health bodies can maximise their effectiveness in their role can be found in the forthcoming comprehensive Public Health England guidance.

A number of local alcohol action areas (LAAAs[2]) are looking at the effectiveness of Directors of Public Health acting in their role as a responsible authority. The LAAAs are also looking at ways in which they can reduce health harms within the current licensing framework. For more information on the work taking place in LAAAs and to find out about examples of best practice generated through this and similar work you can contact the relevant PHE centre alcohol lead:

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[2] In its Next Steps response to the Alcohol Strategy consultation, published in July 2013, the Government announced that it would launch 15-20 Local Alcohol Action Areas (LAAAs) who would look at addressing three aims over a 15 month period: tackling alcohol-related crime and disorder; reducing alcohol-related health harms and promoting growth by establishing diverse and vibrant night-time economies. In February 2014 20 LAAAs were launched. Whilst each LAAA has responsibility for identifying the most relevant challenges and problems it faces and setting its own objectives, they each benefit from advice and support from the Government, Welsh Government (for areas in Wales), Public Health England, national industry representatives and other partner agencies