

ANTI-SOCIAL BEHAVIOUR BILL

PROPOSED EHO POWER TO CLOSE LICENSED PREMISES CAUSING A NOISE NUISANCE REGULATORY IMPACT ASSESSMENT

1. Purpose and Intended Effect of the Measure

(i) **Issue:** Currently under the Licensing Act 1964 as amended by the Criminal Justice & Police Act 2001, a Police officer of the rank of Inspector or above may make temporary closure orders regarding relevant licensed premises. These orders can be made either because it is believed:

- (a) There is likely to be – or there is - disorder on, or in the vicinity of and related to, the premises and the closure of the premises is necessary in the interests of public safety; and
- (b) A disturbance is being caused to the public by excessive noise emitted from the premises and the closure of the premises is necessary to prevent the disturbance.

However the Police unlike the local authority's environmental health teams do not have the training, skills and experience to deal effectively with (b) excessive noise complaints.

(ii) **Objectives:** Extending the temporary closure power on ground (b) – excessive noise emitted from licensed premises - to senior environmental health officers (EHOs) within local authorities should produce reductions in noise disturbance suffered by local residents.

(iii) **Risk assessment:** Noise from licensed premises, particularly on Friday and Saturday nights can cause considerable disturbance and irritation to local residents, and in severe cases induce fear of criminal damage. However, if the temporary closure power is extended to local authorities there will a significant personal safety issue for its environmental health officers when issuing a closure order. This will mean that a Police presence will be essential when issuing and implementing an order.

2. Options

Identify options: Two options have been identified:

Option 1 - leave power exclusively with Police of the rank of inspector or above.

Option 2 - provide senior EHOs with an equivalent power to react swiftly to close licensed premises which are excessively rowdy.

3. Benefits and disadvantages

(i) Option 1 would leave the position unchanged. With regard to the other option, the benefits and disadvantages affect five groups of stakeholders to varying degrees: the local community, the licensed trade, the Police, the local authority, and consumers.

The local community

Benefits

- greater assurance of swift local authority action to reduce disturbance.

- reduced noise & nuisance.

Risks

- none identified.

The licensed trade

Benefits

- support for the industry's efforts to promote social responsibility among traders.
- exposure of licensees who damage the industry's reputation by failing to maintain orderly premises

Risks

- commercial losses during period of closure up to 24 hours.

Local Authorities

Benefits

- improved ease of enforcing existing law.
- greater efficiency in preventing noise nuisance.
- major deterrent for licensees who might allow premises to fall into disorder.
- improved ability to deal with problem licensed premises.
- support for aims in reducing crime and disorder generally.

Risks

- personal safety issues when issuing and implementing a closure order.

Consumers

Benefits

- more civilised drinking environments.

Risks

- none identified.

Police

Benefits

- noise complaints from licensed premises will be handled by local authority officers with skills, training and experience in noise control.

Risks

- none identified.

(ii) Measurable outputs and anticipated outcomes

The following key outcomes should be obtained:

- a decrease in reports of nuisance and noise by local residents living near licensed premises to both local authorities and the police.
- improved liaison between the local authority, police and licensees.

4. Enforcement, monitoring and review

The local authority maintain records of their responses to noise complaints for the purpose of making reports to the CIEH (Chartered Institute of Environmental Health). These records will be used to monitor the impact of the new powers.

5. Compliance costs

(i) Business sectors affected: The sectors affected are the retail, hospitality and leisure sectors. There are approximately 111,000 premises permitted to sell alcohol for consumption on those premises, of which around 60,000 are public houses. These premises broadly employ over 1 million people.

(ii) Compliance costs for a typical business: There is no typical business. The sector includes traditional public houses; so-called "superpubs" with large capacities; nightclubs and discotheques; restaurants; wine bars; hotels and premises which provide a range of these facilities. Currently a local authority will respond to noise and nuisance complaints using its powers under Part III of the Environmental Protection Act 1990, and will issue an abatement notice where a statutory nuisance is occurring. This will remain the preferred approach to dealing with the vast majority of noise complaints from licensed premises.

However in the very exceptional circumstances which justify the local authority using the proposed temporary closure powers, the business will incur commercial losses relative to the period that it is shut. This could be less than an hour or take up much of the next day's opening hours in extreme cases. Accordingly, potential losses might range from £100 (closure for less than one hour in a small public house) to £50,000 (closure of a 2,000 capacity "superpub" for a period of 24 hours at a weekend). The licensee will also be likely to incur legal costs as he or she will be required to appear before the licensing authority as soon as possible after the event. The legal costs of these proceedings might be between £1,000 (no appeal) to £10,000 (with appeals).

(iii) Total compliance costs: There would be no compliance costs for businesses which maintain orderly premises.

As regards errant premises which do not comply with the law, it is estimated that a very small number of businesses are likely to fall foul of this closure power.

We predict that the proposed change will result in very few closure orders. Currently local authorities handle the vast majority of noise complaints without needing to resort to enforcement action. Just 4% of noise complaints about commercial or leisure premises handled by LA environmental health departments result in enforcement action, and a mere 1.4% of all complaints about commercial or leisure premises result in a prosecution [source:CIEH,2002].

Local authorities would be expected to only use the proposed closure power in exceptional and rare circumstances, where alternative enforcement has or is expected to fail, and the licensee is not co-operating. A further restriction on its use would be the need for the local authority to gain agreement from the police to attend the venue to ensure both the personal safety of the local authority's officers and for the police to attend in sufficient numbers to successfully and safely empty the premises of customers.

For this reason the maximum number of closures would be 100 per year, with the actual figure probably below 10.

The costs to those businesses, depending on their size and the length of the closure, will range from £1,100 to £60,000 in terms of commercial losses and legal costs associated with subsequent revocation proceedings. If we take the maximum number of closures as one hundred, the total cost could therefore be between £110,000 and £6 million.

The costs to a business of the potential loss of licence following a hearing are unquantifiable, involving both owners of businesses and salaried managers.

6. Small Firms' Impact Test

The Small Business Service have commented:

- (a) "Small Business Service have received an assurance from DEFRA that this regulation will continue to operate as before, but will give licensees a right to sue their EHO if the closure is not in accordance with laid down procedure. We would expect this procedure to require that closure is the necessary approach to deal with the problem.
- (b) We are pleased to accept their offer to have SBS work with them on the review of the 'Good Practice Guidance for Police and Local Authority Co-operation' that it produced jointly with the association of Chief Police Officers in 1997."

7. Competition Assessment

We do not expect that the proposal will have any implications for competition. This view is based on the fact that the order would only be for very limited period and their usage would be relatively rare. Also, it would be unlikely that any business receiving an order for temporary closure would account for a significant proportion of the market such that it temporary closure would have a significant effect on competition.

8. Other costs

8.1 Local Authorities

The intention is that these measures should act as a strong deterrent against the development of noise nuisance on licensed premises. Because of the deterrent effect, these powers should very rarely need to be deployed. There should therefore be no major increase in the work of the relevant licensing authority in following up the action. Where the local authority does use the proposed powers to close licensed premises, the burden of monitoring those premises for the rest of the night will be reduced. However, public expectation following an introduction of a new power is likely to mean an increase in the number of complaints reported to local authorities regarding noise nuisance from licensed premises, and also an increase in the public's perception of the ability of a local authority to deal with them.

According to recent statistics, 36% of English local authorities and 53% of Welsh local authorities supply a full 24-7 noise response service [CIEH, 2002]. When figures for those local authorities that offer either a partial or full out-of-hours service are considered this increases to 84% of English local authorities, and 67% of Welsh local authorities. However this still leaves 16% of English local authorities, and 33% of Welsh local authorities that do not offer a noise response service during the hours when nuisance from licensed premises is most likely to occur. In these cases public

expectations may mean that these local authorities will need to consider a partial out-of-hours service to meet local demand.

8.2 Legal

All closures would result in an initial referral to the magistrate's court. This would mean a very maximum of 100 additional hearings in the magistrate's court a year, but probably this figure will be below 10.

9. Consultation

No consultation with the industry or other interested bodies has taken place.

10. Summary and Recommendations

Option 1

No additional financial costs would arise from a decision not to extend the closure powers to a local authority.

Option 2

The financial costs to industry only involve businesses which are producing unacceptable levels of noise nuisance, and do not convince the local authority that adequate steps are being taken to control this. The predicted costs to business of between £110,000 and £6 million would seem acceptable when weighed against the significant benefits expected. Furthermore, these measures should not impact on businesses maintaining orderly premises save by creating a deterrent against any reduction in standards. The benefits to the police, local authority and local community in preventing general disturbance should be significant. However this does represent an additional burden on local authorities, in particular those that do not yet offer an evening and night-time noise response service. Its successful introduction would also require the Police and local authorities to work closely and effectively in partnership to manage any risks to personal safety when issuing and enforcing an order. This is the recommended option.

MINISTERIAL DECLARATION

I have read the Regulatory Impact Assessment and am satisfied that the benefits justify the costs

Signed by the responsible Minister

Bob Ainsworth

Date 26 March 2003

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