

Reducing the burden of proof on licensing authorities

December 2010

What is the policy aim?

The Coalition Agreement included a commitment to overhaul the Licensing Act to give local authorities and the police much stronger powers to remove licences from, or refuse to grant licences to, any premises that are causing problems in the local area.

What is burden of proof?

When making decisions on new and existing licences, and fulfilling their licensing responsibilities, licensing authorities are currently required under the Licensing Act 2003 to demonstrate that these decisions are 'necessary' for the promotion of the licensing objectives in their local area.

The four licensing objectives are:

- The prevention of crime and disorder;
- Public safety;
- The prevention of public nuisance;
- The protection of children from harm.

The requirement to demonstrate that their actions are 'necessary' places a significant evidential burden on the licensing authority to prove that their actions are absolutely essential for the promotion of the licensing objectives in the local area.

What are the proposed changes to be made through the Bill?

The wording will be amended throughout the Licensing Act 2003 to lower the evidential hurdle for licensing authorities when making licensing decisions by requiring that they make decisions which are 'appropriate' rather than necessary for the promotion of the licensing objectives. This will give licensing authorities greater power to tackle irresponsible premises.

How is appropriate defined? What is the difference between a change being necessary and appropriate?

The statutory guidance will be amended to provide licensing authorities with advice on how to determine if an action is appropriate. Licensing authorities will be required to demonstrate that their actions are 'appropriate' to promote the licensing objectives in that the actions are suitable for the particular condition, occasion or place. The current requirement to demonstrate that actions are 'necessary' requires that licensing authorities demonstrate that their actions are absolutely essential for the promotion of the licensing objectives which is a greater evidential hurdle.

Won't reducing the burden of proof for licensing authorities mean they can make whatever decision they want without having to justify it?

No. Under the new proposals licensing authorities will still have to justify that any action they take is 'appropriate' for the promotion of the licensing objectives and consider relevant representations from other responsible authorities and interested parties. Determinations will still have to be evidence based and give regard to the impact of other legal responsibilities on the employer or operator; whether any conditions being imposed can feasibly be met and the impact of the conditions on promoting other licensing objectives.

Main views of consultation respondents

This proposal was supported by large numbers of respondents. Respondents were keen to ensure that appropriate safeguards were in place to ensure that all decisions were fair. Whilst the evidential hurdle is being lowered, determinations will still have to be evidence based and give regard to the impact of other legal responsibilities on the employer or operator; whether any conditions being imposed can feasibly be met and the impact of the conditions on promoting other licensing objectives.