

WIRRAL COUNCIL

LICENSING, HEALTH AND SAFETY AND GENERAL PURPOSES COMMITTEE

19 MARCH 2012

SUBJECT:	REFERRALS FROM THE ALCOHOL SCRUTINY REVIEW
WARD/S AFFECTED:	ALL
REPORT OF:	DIRECTOR OF LAW, HR, & ASSET MANAGEMENT
RESPONSIBLE PORTFOLIO HOLDER:	COUNCILLOR BILL DAVIES
KEY DECISION?	YES

1.0 EXECUTIVE SUMMARY

- 1.1 This report is to present to Committee referrals from Cabinet of 17 March 2011, following their consideration of the final report of the Scrutiny Programme Board's Alcohol Scrutiny Review.

2.0 BACKGROUND AND KEY ISSUES

- 2.1 At the meeting of the Scrutiny Programme Board, held on 14th September 2009, Members agreed to undertake an in-depth scrutiny review regarding progress towards implementation of the Alcohol Strategy in Wirral. The Board Members agreed that volunteers should be sought from among scrutiny members to form a Panel. It was agreed that the review should be managed by the Scrutiny Programme Board due to the cross-cutting nature of the topic and the impact on a number of areas such as health, young people, anti-social behaviour / community safety, trading standards and licensing.
- 2.2 Subsequently, the final report of the Alcohol Scrutiny Review¹ was considered at Cabinet² of 17, March, 2012. It was resolved that the following recommendations from the Report be referred to the Licensing, Health & Safety and General Purposes Committee:-

E. Legislative framework

Wirral Council Cabinet is encouraged to lobby the Home Office for changes in the law aimed at reducing the supply of alcohol to young people by:

- Limiting the promotion of the sale of alcohol, for example, through 'happy hours'
- Restricting the use of alcohol as a 'loss leader' by supermarkets and other retail outlets

- Reducing the promotion of alcohol through advertising
- Reducing the scale of proxy sales by imposing greater fines on those purchasing alcohol on behalf of under-age drinkers

F. Minimum unit pricing for alcohol

The Review Panel supports the principle of minimum unit pricing for alcohol. Council is requested to engage positively in the process to introduce a regional minimum price for alcohol in the Merseyside region.

G. Cumulative Impact Policy

Council should actively seek to introduce a Cumulative Impact Policy, as has been introduced by Local Authorities such as Liverpool and Brighton, in order to tackle the increase in outlets in specific hotspot areas.

J. Relationship with Magistrates

The Council is encouraged to further develop a tripartite relationship with magistrates and the Police in order to cultivate a mutual understanding of issues relating to the application of licensing laws in the courts.

- 2.3 A number of proposals have been suggested by government that will if enacted influence the legislative framework affecting recommendations E, F, and G. In addition, a new national alcohol strategy has been heralded for some time but has still not been launched. Presentation of these referrals has been held in anticipation of the imminent introduction of changes announced.
- 2.4 Set out below is the current situation in respect of the recommendations referred from Cabinet.

3.0 MINIMUM PRICE FOR ALCOHOL

- 3.1 A minimum unit price for alcohol would set a floor price for a unit of alcohol meaning it cannot be sold for lower than that price. There is strong international evidence that tackling price, as part of a package of measures, including education and diversion - can help reduce alcohol consumption and related harm.
- 3.2 A report on the subject was considered by a meeting of this Committee held on, 13 September 2010³, in the context of a proposal that local authorities on Merseyside should seek a local bye-law to implement a minimum price for alcohol throughout Merseyside.

3.3 On 21, March, 2011 the Licensing, Health and Safety and General Purposes Committee considered a report of the Director of Law, HR and Asset Management. The report presented the results of a public consultation into the principle of the implementation of a minimum unit price for alcohol. The result of the consultation was consistent with national information which showed that opinion for and against a minimum price for alcohol is broadly balanced.

3.4 The Committee of the 21, March, 2011 agreed the following resolution:

“That Members do not support the proposals to seek a local by-law to enforce a minimum unit price for alcohol.”

In coming to its decision the Committee took into account an announcement that the Government intended to introduce its own measures.

3.5 At the Council meeting of 18, April 2011, the following motion in the name of Councillor Mitchell and Councillor Bridson was considered.

This Council:

(1) Expresses its concern about the serious issues for the health, safety and wellbeing of young people that the Alcohol Scrutiny Review report raises, in particular, data from The Local Alcohol Profiles for England, published by the North West Public Health Observatory in September 2010, which ranks Wirral as 323 out of 326 local authority areas for alcohol-specific hospital admissions for under-18s.

(2) Welcomes the Cabinet decisions that tackling alcohol misuse is a priority for Wirral, both in the Corporate Plan and the Council Budget.

(3) In particular, gives support for the Scrutiny Review Panel's recommendation F:

(4) “Minimum unit pricing for alcohol - The Review Panel supports the principle of minimum unit pricing for alcohol. Council is requested to engage positively in the process to introduce a regional minimum price for alcohol in the Merseyside region.”

(5) States its commitment to the principles of minimum pricing for alcohol and pledges to work together with other agencies, as appropriate, to secure minimum pricing for alcohol in the Merseyside region, set at an appropriate level to deter young drinkers.

(6) Welcomes the measures proposed by Government to set a minimum price for alcohol at ‘duty plus VAT’ as a step in the right direction, but believes there is more that should be done.

(7) Therefore, in light of the above, requests the Licensing, Health, Safety and General Purposes Committee reconsider the issue of alcohol minimum pricing at its next meeting.

3.6 An amendment to the above motion, in the name of Councillors Bill Davies and John Salter was proposed as follows;

Delete all after paragraph (1) and insert:

(2) Council recognises that high priority has to be given to tackling alcohol misuse on Wirral.

(3) Council believes the measures proposed by Government to set a minimum price for alcohol at “duty plus VAT” will, in reality, set the minimum cost so low as to have little effect on the problem.

(4) Council therefore agrees with the Review Panel support for the principle of minimum unit pricing for alcohol as a means of reducing alcohol consumption and the harm done by that consumption.

(5) Council believes that minimum unit pricing for alcohol, set at an appropriate level, should be a cross party decision which is applied nationally in order to avoid any distortions to local trade.

(6) Council believes that every effort should be made regionally to set a reasonable pricing policy, which deters young drinkers, on a voluntary basis

(7) However, Council is concerned that any use of by-laws across the Region compelling minimum unit pricing could severely disadvantage local traders by driving customers across local authority borders to purchase alcohol, and the goods they would otherwise have purchased at the same time, in a neighbouring authority without the by-laws. Council further believes that Wirral would be particularly vulnerable geographically to this effect.

(8) Council is also concerned that there could be an increase in illicit trading in alcohol to avoid the by-laws with the associated danger of increasing criminality.

(9) Council therefore requests officers to draw up a detailed and considered report for Cabinet, setting out the advantages and disadvantages, both social and economic, of using by-laws to set a regional minimum price per unit, before proceeding any further.

3.7 On being put to Council the amendment was lost (22:39) and the motion also lost (13:48)

- 3.8 The Government announced in January 2011, announced measures to ban retailers from selling drinks for less than the value of duty and VAT owed on them. This would, for the first time, effectively set an individual minimum value for each product under which the price cannot drop. However, stores and landlords would not have to take into account the cost of producing the drinks when setting a price meaning they can still sell the drinks at a loss in order to entice customers to buy more. The ban is set to be introduced from 6 April 2012. Sir Ian Gilmore, a liver specialist and chairman of the UK Alcohol Alliance in the Royal College of Physicians, is quoted as saying of the measure “It is a remarkably low floor which will catch very, very few products,”
- 3.9 A new Alcohol Strategy is due to be published later this year and may go further in recommending a higher minimum unit price for alcohol. The Daily Telegraph⁴ reported on the 04 march 2012, that the Prime Minister has plans to introduce a minimum price for alcohol of 40p a unit.
- 3.10 The Liverpool City region Child Poverty and Life Chance Strategy⁵ has a commitment to the introduction of a minimum unit price for alcohol at 50p per unit. This has been publicly supported by the Cheshire and Merseyside Director of Public Health.

4.0 CUMULATIVE IMPACT POLICY

- 4.1 The Guidance⁶ on the Licensing Act 2003, made under S182 states the following with respect to the concept of “Cumulative Impact”;

““Cumulative impact” is not mentioned specifically in the 2003 Act but means in this Guidance the potential impact on the promotion of the licensing objectives of a significant number of licensed premises concentrated in one area. The cumulative impact of licensed premises on the promotion of the licensing objectives is a proper matter for a licensing authority to consider in developing its licensing policy statement”.

“In some areas, where the number, type and density of premises selling alcohol for consumption on the premises are unusual, serious problems of nuisance and disorder may be arising or have begun to arise outside or some distance from licensed premises. For example, concentrations of young drinkers can result in queues at fast food outlets and for public transport. Queuing in turn may be leading to conflict, disorder and anti-social behaviour. While more flexible licensing hours may reduce this impact by allowing a more gradual dispersal of customers from premises, it is possible that the impact on surrounding areas of the behaviour of the customers of all premises taken together will still be greater in these cases than the impact of customers of individual premises. These conditions are more likely to

occur in town and city centres, but may also arise in other urban centres and the suburbs”.

- 4.2 The Guidance goes on to state that there must be an evidential basis for such a policy and therefore there should be information that demonstrates cumulative impact to be a local problem.
- 4.3 After considering the evidence and after consulting with interested parties (specified in the guidance) the licensing authority may be satisfied that cumulative impact element is included in the council’s licensing policy.
- 4.4 The steps to be followed by the licensing authority are specified as follows:
 - Identify concern about crime and disorder or public nuisance
 - Consider whether there is good evidence that crime and disorder or nuisance are `happening and are caused by the customers of licensed premises, or that the risk of `cumulative impact is imminent
 - Identify the boundaries of the area where problems are occurring
 - Consult with those specified in section 5(3) of the 2003 Act, and subject to the outcome of the consultation
 - Include and publish details of a special policy
- 4.5 The effect of adopting a special policy of this kind is to create a rebuttable presumption that applications for new premises licences or club premises certificates or variations that are likely to add to the existing cumulative impact will normally be refused, following relevant representations, unless the applicant can demonstrate in their operating schedule that there will be no negative cumulative impact on one or more of the licensing objectives.
- 4.6 However a cumulative impact policy does not relieve the responsible authorities (e.g. Police, Environmental Health) from making representations. If there are no representations, the licensing authority must grant the application in terms that are consistent with the operating schedule submitted.
- 4.7 An important additional point is that as the guidance states, “The absence of a special policy does not prevent any responsible authority or interested party making representations on a new application for the grant, or variation, of a licence on the grounds that the premises will give rise to a negative cumulative impact on one or more of the licensing objectives”.

4.8 The Guidance also provides a list of other measures to control cumulative impact: (The comments describe the situation for Wirral in relation to these issues)

- Planning controls – The current Supplementary Planning Guidance⁷ provides for cumulative impact issues to be taken into account for planning applications. The issue is being given additional consideration in the developing Core Planning Strategy
- Positive measures to create a safe and clean town centre environment in partnership with local businesses, transport operators and other departments of the local authority. The Council works closely with Wirral Chamber of Commerce to promote a clean and safe town centre through various initiatives.
- The provision of CCTV surveillance in town centres, ample taxi ranks, provision of public conveniences open late at night, street cleaning and litter patrols – The council operates a comprehensive CCTV system in conjunction with Merseyside Police. Reviews of taxi ranks are undertaken in consultation with businesses and the taxi trade.
- Powers of local authorities to designate parts of the local authority area as places where alcohol may not be consumed publicly. Wirral has designated areas across the borough where alcohol cannot be consumed publicly.
- Police enforcement of the general law concerning disorder and anti-social behaviour, including the issuing of fixed penalty notices. Merseyside Police have a strategic response to disorder and anti-social behaviour as part of the work of the Community Safety Partnership. They also issue fixed penalty notices for disorder as appropriate, and a system of “Banning Orders” operates across Wirral.
- The prosecution of any personal licence holder or member of staff at such premises who is selling alcohol to people who are drunk. A training programme to help staff of licensed premises to refuse alcohol to persons that are drunk has been delivered (funded by Wirral Primary Health Trust, PCT).
- The confiscation of alcohol from adults and children in designated areas. Wirral, Wirral (PCT) and Merseyside Police undertake joint operations to tackle street drinking by young people.
- Police powers to close down instantly for up to 24 hours any licensed premises or temporary event on grounds of disorder, the likelihood of disorder or noise emanating from the premises causing a nuisance.

- The power of the police, other responsible authorities or a local resident or business to seek a review of the licence or certificate in question. Wirral has made extensive use of these powers.
 - Other local initiatives that similarly address these problems. Wirral, Wirral PCT and Merseyside Police have developed a “Charter” for licensed premises which sets out a minimum standard of best practice for the management of premises.
- 4.9 Since the introduction of the Licensing Act 2003 in 2005, there has only been one request for the consideration of a cumulative impact policy. The request was submitted by residents of Hoylake. The Licensing Act 2003 Committee, of 28, September 2008 considered the matter and the evidence supplied by responsible authorities. The Committee determined that there was insufficient evidence for to support the introduction of a special cumulative impact policy for Hoylake

5.0 RELATIONSHIP WITH MAGISTRATES

- 5.1 In determining matters under the Licensing Act 2003 decisions must be made having regard to the relevant legislation, Statutory Guidance, The Council’s Statement of Licensing Policy and relevant case law. At Hearings held before the Licensing Act 2003 Sub Committee and the Magistrates Court on Appeal, the decision makers have to make determinations informed by these references.
- 5.2 Merseyside Police work closely with Licensing Officers in both exchanging relevant information and undertaking joint enforcement activities. Any issue raised through this work that was considered relevant to the Magistrates Court is communicated through the Council’s Licensing Solicitor. It is acknowledged that each party must have an up to date knowledge and understanding of the legislation.
- 5.3 The Council’s Licensing Solicitor has a good working relationship with the Court and is in attendance at Court on a weekly basis. This provides both the Court and the Council an ongoing opportunity for matters to be raised and discussed.
- 5.4 The undertaking of tripartite meetings between the parties involved could undermine and prejudice the Judicial Appeal process as the Magistrates have to determine whether a decision of the Licensing Act 2003 Sub Committee is wrong and in doing so may alter that decision.

6.0 LEGISLATIVE FRAMEWORK

- 6.1 There have been developments in respect of some of the elements of the recommendation.

- 6.2 In respect of “Limiting the promotion of the sale of alcohol, for example, through ‘happy hours’”, new mandatory conditions applying to licences were introduced from 6th April 2010.
- 6.3 The Licensing Act 2003 (Mandatory Licensing Conditions) Order 2010⁸, set out five new conditions that apply to all licensed premises and those with a club premises certificate. The effect of the conditions is to:
- Ban irresponsible promotions;
 - Ban the dispensing of alcohol directly into the mouth; and
 - Ensure that customers have access to free tap water so that they can space out their drinks and not get too intoxicated too quickly.
 - Require an age verification policy to be in place to prevent underage sales; and
 - Ensure that customers have the opportunity to choose small measures of beers, ciders, spirits and wine.
- 6.4 The Guidance from the Home Office defines irresponsible promotions as “any activity or offer that encourages customers to drink in a way that could cause a significant risk of breaching one or more of the four licensing objectives”. It also provides examples of the types of promotions that are therefore prohibited. For example: Drinking games that speed up drinking or large quantities of alcohol free or at discounted prices.
- 6.5 The latter example above therefore prevents promotions such as:
- “women drink for free”;
 - “half price drinks for under 25s”;
 - discount nights for students; or
 - cheap drinks for fans of a specific sporting team.
 - “all you can drink for £10”;
 - “pay £5 entry and then drink up to 12 shots”;
 - “10 pints for £10”; or
 - “pay your entry fee then drink for free until 10pm”.
- 6.6 However, and especially pertinent to the “happy hour” element of the recommendation the Guidance states that;
- “This condition will not ban promotions that are run in a manner consistent with responsible drinking such as the majority of standard alcohol retail practices. We are not banning happy hours, pub-crawls or general discounting of alcohol per se. These activities will only fall foul of this condition if they are promoted and organised in an irresponsible way”.

- 6.7 As regards “Restricting the use of alcohol as a ‘loss leader’ by supermarkets and other retail outlets”. This problem would be improved by the introduction of a minimum unit price for alcohol as described above in paragraph 3.8.
- 6.8 Reducing the promotion of alcohol through advertising. The report into alcohol of the Parliamentary Health Committee⁹ (2009), concluded that:

“The current system of controls on alcohol advertising and promotion is failing the young people it is intended to protect. The problem is more the quantity of advertising and promotion than its content. This has led public health experts to call for a ban. It is clear that both the procedures and the scope need to be strengthened”.

The pending Government Alcohol Strategy may address these issues. The Daily Telegraph⁴ on the 4 March 2012 reported that the Government intends to ban advertisements for cheap alcohol.

- 6.9 There has been no development in respect of, “Reducing the scale of proxy sales by imposing greater fines on those purchasing alcohol on behalf of under-age drinkers”. The new Police and Social Reform Act 2011 (See 7.0 below) has included a measure to double the fine for **premises** that persistently sell alcohol to under 18s. The length of the suspensions that can be imposed for such premises is also increased.

7.0 POLICE REFORM AND SOCIAL RESPONSIBILITY ACT 2011¹⁰

- 7.1 The Bill received royal assent on 15 September 2011 however it is yet to be brought into force. It amends and supplements the Licensing Act 2003 with the intention of ‘rebalancing’ it in favour of local authorities, the police and local communities. The measures include:
- Licensing Authorities become “responsible authorities”
 - Primary care Trusts and Local Health Boards become responsible authorities.
 - The evidential burden on licensing authorities is reduced
 - The vicinity test in relation to who may make a representation is removed
 - Introduces greater flexibility in relation to the scrutiny and utility of temporary event notices.
 - Provides for doubling the maximum fine for premises which persistently sell alcohol to under 18s, and for increasing the period of suspensions which can be imposed on such premises.

- Allows local councils to charge more for late-night licenses to pay for additional policing.
- 7.2 The Act includes a commencement provision for the government to commence any or all of the provisions when it so chooses. Legislative procedure and protocol normally means that measures are brought into force on one of two common commencement dates in April or October each year. Some of the alcohol provisions introduced in the Act require changes to secondary legislation and regulations prior to commencement. The statutory guidance issued under section 182 of the Licensing Act 2003 will also be amended to reflect the changes introduced by the Act before the first provisions are commenced.

8.0 RELEVANT RISKS

- 8.1 Alcohol abuse is a significant cause of ill health and cost to the National Health Service

9.0 OTHER OPTIONS CONSIDERED

- 9.1 The Report provides information to members for their consideration.

10.0 CONSULTATION

- 10.1 This Report was subject to consultation with the Drug and Alcohol Action Team (DAAT)

11.0 IMPLICATIONS FOR VOLUNTARY, COMMUNITY AND FAITH GROUPS

- 11.1 There are none arising directly from this report.

12.0 RESOURCE IMPLICATIONS: FINANCIAL; IT; STAFFING; AND ASSETS

- 12.1 There are none arising directly out of this report.

13.0 LEGAL IMPLICATIONS

- 13.1 There are none arising directly out of this report.

14.0 EQUALITIES IMPLICATIONS

- 14.1 Has the potential impact of your proposal(s) been reviewed with regard to equality?

No because of another reason which is

The report is an information report which in itself does not have equalities implications. A subsequent decision of the committee may have such implications.

15.0 CARBON REDUCTION IMPLICATIONS

15.1 There are none arising directly out of this report.

16.0 PLANNING AND COMMUNITY SAFETY IMPLICATIONS

16.1 There are none arising directly out of this report.

17.0 RECOMMENDATIONS

17.1 That Members consider the recommendations referred to this Committee from Cabinet of 17 March, 2011.

18.0 REASONS FOR RECOMMENDATIONS

18.1 The recommendations arising from The Alcohol Scrutiny Report: "Access to Alcohol by Young People" was considered by Cabinet of the 17 March 2011 and recommendations E, F, G, and J as detailed in 2.2, above, were referred for consideration by this Committee.

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APPENDICES

None

REFERENCE MATERIAL

1. Report of the Alcohol Scrutiny Board January 2011 and Appendix: Access to Alcohol by Young People in Wirral Report



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2. Minutes of the Cabinet held on 17 March 2011
[http://democracy.wirral.gov.uk/documents/g3068/Printed%20minutes,
%2017th-Mar-2011%2018.15,%20Cabinet.pdf?T=1](http://democracy.wirral.gov.uk/documents/g3068/Printed%20minutes,%2017th-Mar-2011%2018.15,%20Cabinet.pdf?T=1)

3. Report to the Licensing, Health and Safety and General Purposes Committee 13, September 2010.



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4. Daily Telegraph 4-03-12:

<http://www.telegraph.co.uk/news/uknews/9122063/Adverts-for-cheap-alcohol-could-be-banned.html>

5. Liverpool City Region: Child Poverty and Life Chances Strategy 2011-2014,

6. Licensing Act 2003 Guidance under S182, Home Office, October 2010



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7. Supplementary Planning Guidance Wirral MBC: SPD3 Hot Food Takeaways, Restaurants, Cafes and Drinking Establishments (October 2006).

<http://www.wirral.gov.uk/my-services/environment-and-planning/planning/local-development-framework/supplementary-planning-documents>

8. SELLING ALCOHOL RESPONSIBLY: The New Mandatory Licensing Conditions Home Office April 2010.



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9. Health Committee – First Report, Alcohol, 10 December 2010.

<http://www.publications.parliament.uk/pa/cm200910/cmselect/cmhealth/151/15102.htm>

10. Police Reform and Social Responsibility Act 2011

http://www.google.co.uk/url?q=http://www.legislation.gov.uk/ukpga/2011/13/contents/enacted&sa=U&ei=bGBXT9LqK4ix0QWd_LGMAw&ved=0CCAQFjAA&usq=AFQjCNF5iyXWU0_sEyRt39apzVrYims11w

SUBJECT HISTORY (last 3 years)

Council Meeting	Date
Minimum Unit Price for Alcohol: Licensing, Health and Safety and General Purposes Committee	13 September 2010.
Council	21 March 2011.
Alcohol Scrutiny Report:	17 March 2011
Cabinet	18 April 2011
Scrutiny Program Board	05 January 2011
Health and Wellbeing Overview and Scrutiny Committee	22 March 2011