

Swindon Borough Council

Licensing Committee

Wednesday, 1 September 2010

Committee Room 1, Civic Offices (Anticipated meeting room)

At 5.30 p.m.

**Conservative
Councillors**

Vera Tomlinson
(Chair)
Andrew Bennett
(Vice-Chair)
Michael Bray
Doreen Dart
Brian Ford
Janet Heenan
Richard Hurley
Colin Lovell
Kevin Parry
David Wren

**Labour
Councillors**

Paul Baker
John Ballman
Robert Wright

**Liberal Democrat
Councillors**

David Wood

**Independent
Councillors**

Steve Wakefield

Committee Officer: Shaun Banks (Telephone: 01793 463606)

sbanks@swindon.gov.uk

Swindon Borough Council, Civic Offices, Euclid Street, Swindon, SN1 2JH
(Telephone 01793 445500)

AGENDA

1. Apologies for Absence

2. Declarations of Interest

Members are reminded that at the start of the meeting they should declare any known interests in any matter to be considered, and also during the meeting if it becomes apparent that they have an interest in the matters being discussed.

3. Minutes (Pages 1 - 2)

To receive the minutes of the meeting held on 21st May 2010.

4. Public Question Time

See explanatory note below. Please phone the Committee Officer whose name and number appears at the top of this agenda if you need further guidance.

5. Appointments to Sub-Committee and Task Group (Pages 3 - 4)

6. Government Consultation "Rebalancing the Licensing Act" (Pages 5 - 46)

Date of Despatch: 24 August 2010

Public Question Time - Swindon Borough Council is committed to increasing its accountability to the public and to promoting active citizenship. Up to 15 minutes will be allowed at the start of all Council meetings for questions to the Chair from members of the public about the work of the Committee (except for confidential matters and specific planning applications). Questions must be relevant, clear and concise. Because of time constraints Public Question Time is not an opportunity to make speeches or statements. Prior notice of a question to the Director of Law and Democratic Services is desirable - particularly if detailed background information is needed.

Access Arrangements – The Venue is wheelchair accessible and an infrared receiver hearing system is provided. If you would wish to attend the meeting but have any special requirement to enable you to do so please contact the Committee Clerk above, as soon as possible prior to the date of the meeting.

If you would like to receive any of the pages contained in this agenda in a larger print size please contact the Committee Officer whose name appears on the first page of this agenda.

LICENSING COMMITTEE

FRIDAY, 21 MAY 2010

PRESENT:- Councillor Vera Tomlinson in the Chair; Councillors John Ballman, Andrew Bennett, Michael Bray, Doreen Dart, Janet Heenan, Fay Howard, Richard Hurley, Colin Lovell, Kevin Parry, Vera Tomlinson, Steve Wakefield, David Wood, David Wren and Robert Wright.

An apology for absence was received from Councillors Junab Ali.

1. Minutes

Resolved – That the minutes of the meeting held on 1st March 2010, be confirmed and signed as a correct record.

2. Declarations of Interest

The Chair reminded Members of the need to declare any known interests in any matters to be considered at the meeting. No declarations were made.

3. Public Question Time

No public questions were received during the meeting.

4. Local Government Act 1989 - Section 15: Review of Political Balance Arrangements

Resolved – That, further to Minute 15(2) of the Council, and having carried out a review under Section 15 of the Local Government and Housing Act 1989 this Committee continue to apply political balance arrangements under the Act.

5. Appointments of Sub-Committees and Panel

Resolved – (1) That an Ad Hoc Licensing Sub-Committee be appointed having the functions set out in the document “Swindon Council Constitution 2009/10” and comprising Councillors Mick Bray, Doreen Dart, Janet Heenan, Fay Howard, Vera Tomlinson, David Wren and Bob Wright.

(All Councillors serving on the Licensing Committee be appointed as substitutes to their respective political group.)

(2) That a Licensing Panel be appointed having the functions set out in the document “Swindon Council Constitution 2009/10” and comprising three Councillors to be drawn from Members of this Committee.

(3) That a Private Hire/Hackney Carriage Licensing Sub-Committee be appointed having the functions set out in the document “Swindon Council Constitution 2009/10” and comprising Councillors Junab Ali, John Ballman, Andrew Bennett, Brian Ford, Richard Hurley, Colin Lovell and Kevin Parry.

(All Councillors serving on the Licensing Committee be appointed as substitutes to their respective political group.)

Appointments to Sub-Committee and Task Group

Licensing Committee

Date 1st September 2010

Author: Director of Law and Democratic Services

Wards Affected

All

Purpose

- To approve a change in Sub-Committee Membership for the remainder of the Municipal Year 2010/11.

Recommendation

The Committee is recommended to:

- Approve changes to Sub-Committee Membership and appoint Members to serve on the Alcohol and Licensing Matters Task Group for the remainder of the 2010/11 Municipal Year.

1 Reasons

- 1.1 To make changes to the Committee's Membership and appoint representation on the Alcohol and Licensing Matters Task Group.

2 Detail

- 2.1 The Conservative Group have requested that Brian Ford be replaced by Councillor Vera Tomlinson as a Member serving on the Private Hire and Hackney Carriage Licensing Sub-Committee.
- 2.3 The Licensing Committee has been asked to nominate two representatives to serve as Members on the Alcohol and Licensing Matters Task Group. Current Membership is Councillors Richard Hurley, Stan Pajak and Vera Tomlinson.

Alternative Options

- No alternative options are proposed.

Risk Management

Financial and Procurement Implications

- There are no financial or procurement implications. All costs will be met from existing budgets.

Legal/Human Rights Implications

- Legal and Human Rights considerations have been taken fully into account in compiling this report which is required to be submitted to Council to ensure compliance with the political balance provisions set

Further information on the subject of this report can be obtained from Shaun banks on Direct Dial No. 463013 or Email sbanks@swindon.gov.uk

Appointments to Sub-Committee and Task Group

Licensing Committee

Date 1st September 2010

out in the Local Government and Housing Act 1989.

Links to Corporate Plans and Policies (in particular to Swindon 2010 Promises)

- The delivery of effective, accountable and transparent decision-making by the Council directly links to those parts of the new Corporate Plan relating to the “Role of the Council” and “Transforming the Organisation”.

Consultees / Appendices

- The Director of Finance (Section 151 Officer) and the Director of Law and Democratic Services (Monitoring Officer) are consulted on all reports.

Background Papers

- Council Constitution 2010/11.

Government consultation 'Rebalancing the Licensing Act'

Licensing Committee

Date: 2 September 2010

Author: Head of Licensing

Wards Affected: All

Purpose

To discuss a draft response to the Home Office consultation 'Rebalancing the Licensing Act'.

Recommendation

Licensing Committee is asked : -

- Using the attached draft response as a starting point, to discuss the text of a response to the consultation.

1. Reasons

- 1.1 The Licensing Act 2003 is to undergo a review, with major changes expected. An opportunity has been given to local authorities to comment.

2. Detail

- 2.1 The consultation is wide-ranging and comments must be submitted by 8 September, if they are to be taken into account. Government has announced that major reform will not be implemented until 2012 at the earliest.
- 2.2 Rather than set out arguments in the body of the report, a proposed response is attached, to provide a starting point for the discussion. It can be freely amended to produce a final submission to the consultation.

Alternative Options

- Committee could resolve not to submit any observations.

Risk Management

Financial and Procurement Implications

The proposal is to comment. There are no costs to doing that but there are proposals in the consultation which would have major financial implications for local authorities if implemented.

Legal / Human Rights Implications It is open to anyone to comment on the consultation proposals. .

Links to Corporate Plans and Policies (in particular to Swindon 2010 Promises)

Further information on the subject of this report can be obtained from Lionel Starling on 01793 466109 or e-mail lstarling@swindon.gov.uk.

Government consultation 'Rebalancing the Licensing Act'

Licensing Committee

Date: 2 September 2010

The exercise of licensing and associated powers relates particularly to reduction of crime and the fear of crime.

Consultees

- The Director of Finance (Section 151 Officer) and Director of Law and Democratic Services (Monitoring Officer) are consulted on all reports.

Background Papers and Appendices

- Consultation document
- Suggested consultation response



Home Office

REBALANCING THE LICENSING ACT

A CONSULTATION ON EMPOWERING INDIVIDUALS, FAMILIES AND LOCAL COMMUNITIES TO SHAPE AND DETERMINE LOCAL LICENSING

MINISTERIAL FOREWORD



For too long town centres up and down the country have been blighted by crime and disorder driven by irresponsible binge drinking. Local communities have not had a strong enough voice in determining which pubs and clubs should be open

in their area and for how long they should trade. Local authorities have had their hands tied by an overly bureaucratic licensing regime meaning they have not been able to adequately respond to local concerns.

The majority of licensed premises are well run businesses, which provide a valuable service to their local communities and the Government recognises the important role which pubs can play as part of the fabric of neighbourhoods and villages. Whilst tackling alcohol-related crime is a priority for the Government, it will not be addressed at the expense of these responsible businesses. Instead, the Government's approach is to provide greater flexibility for communities to deal with the small minority of irresponsible premises that do not contribute to the well-being of local areas.

The Government believes that the Licensing Act is due an overhaul and that through this, the power to make licensing decisions needs to be rebalanced in favour of local communities. The presumption to approve all new licence applications that is embedded within the Licensing Act must be removed. And in its place a new licensing regime needs to be established with local authorities and the police better able to respond to local residents' concerns. If local communities don't want nightclubs open until six in the morning then the local authority should be able to respond flexibly to this concern. Similarly, if the local community does want a vibrant late-night economy, with premises open into the early hours, then the local authority should have the flexibility to charge a fee to pay for any additional policing this generates. Local tax payers shouldn't simply be left to pick up this cost.

Whilst the Government is determined to remove the bureaucracy behind licensing and to put local communities in the lead, it still has a role in setting the framework for responsible trading. For example, the Government is determined that irresponsible businesses which continue to flout the law by selling alcohol to children should no longer be able to trade. This will send a clear signal about individual behaviour and responsibility, and about what is and what isn't acceptable to the public. The Government is also concerned by those businesses that sell alcohol at a loss in order to gain wider trade. As evidenced by the Competition Commission's Groceries Market Inquiry in 2006-2008, all too often alcohol is sold at a price which simply doesn't reflect its cost. This sort of practice is irresponsible as it can lead to binge drinking and subsequent crime and disorder. The Government therefore intends to ban the sale of alcohol below cost price.

With the changes proposed in this consultation the Government believes the net result will be a fundamental shift in the licensing regime in this country, with more emphasis on local accountability and less emphasis on central interference. We welcome your views on these proposals, and on how they will support local decision making, local accountability, and vibrant local night-time economies.



CONTENTS

1.	Executive Summary	4
2.	Background	5
3.	About this consultation	7
4.	Licensing Legislation	8
5.	Giving more local powers to refuse and revoke licences	9
6.	Dealing with the problems of late night drinking	13
7.	Temporary Event Notices	16
8.	Protecting children from the harm of alcohol	18
9.	Banning below-cost sales	20
10.	Reducing burden and bureaucracy of licensing and covering its cost	21
11.	Responses to consultation	23
	Annex A	25

1. EXECUTIVE SUMMARY

1.01 Alcohol plays an important part in the cultural life of this country, employing large numbers in production, retail and the hospitality industry. The industry as a whole contributes around £8.5bn to the Exchequer through excise duty alone, and over 200,000 premises have a licence to sell alcohol. Central to this is a system of alcohol licensing that is effective in regulating sales and reflective of local demands. This document sets out the Government's proposals for overhauling the current licensing regime to give more power to local authorities and the police to respond to local concerns about their night-time economy, whilst promoting responsible business. The Government will be consulting separately on the Coalition's proposals to deregulate live music and similar performances.

1.02 Since the introduction of the Licensing Act there has been growing concern that the original vision of a vibrant "café culture" has failed to materialise. The Government intends to introduce more flexibility into the current licensing regime to allow local authorities and the police, to clamp down on alcohol-related crime and disorder hot spots within local night-time economies. To rebalance the licensing regime the Government is proposing the following measures:

- a. Give licensing authorities the power to refuse licence applications or call for a licence review without requiring relevant representations from a responsible authority.
- b. Remove the need for licensing authorities to demonstrate their decisions on licences 'are necessary' for (rather than of benefit to) the promotion of the licensing objectives.
- c. Reduce the evidential burden of proof required by licensing authorities in making decisions on licence applications and licence reviews.
- d. Increase the weight licensing authorities will have to give to relevant representations and objection notices from the police.
- e. Simplify Cumulative Impact Policies to allow licensing authorities to have more control over outlet density.
- f. Increase the opportunities for local residents or their representative groups to be involved in licensing decisions, without regard to their immediate proximity to premises.
- g. Enable more involvement of local health bodies in licensing decisions by designating health bodies as a responsible authority and seeking views on making health a licensing objective.
- h. Amend the process of appeal to avoid the costly practice of rehearing licensing decisions.
- i. Enable licensing authorities to have flexibility in restricting or extending opening hours to reflect community concerns or preferences.
- j. Repeal the unpopular power to establish Alcohol Disorder Zones and allow licensing authorities to use a simple adjustment to the existing fee system to pay for any additional policing needed during late-night opening.
- k. Substantial overhaul of the system of Temporary Event Notices to give the police more time to object, enable all responsible authorities to object, increase the notification period and reduce the number that can be applied for by personal licence holders.
- l. Introduce tougher sentences for persistent underage sales.
- m. Trigger automatic licence reviews following persistent underage sales.
- n. Ban the sale of alcohol below cost price.
- o. Enable local authorities to increase licensing fees so that they are based on full cost recovery.
- p. Enable licensing authorities to revoke licences due to non-payment of fees.
- q. Consult on the impact of the Mandatory Licensing Conditions Order and whether the current conditions should be removed.

2. BACKGROUND

2.01 The police are fighting a constant and expensive battle against alcohol fuelled crime and anti-social behaviour. The last 5 years have introduced a new drinking culture in our towns and cities. The promised “café-culture” from 24 hour licences has not materialised, instead in 2009/10 almost one million violent crimes were alcohol-related and 47% of all violent crime was fuelled by alcohol. A fifth of all violent incidents took place in or around a pub or club, and almost two-thirds at night or in the evening. There are 6.6 million alcohol-related attendances at hospital accident and emergency (A&E) per year at a cost of £645 million. In addition, 1.2 million ambulance call outs each year costing £372 million are alcohol-related. The total costs of alcohol-related crime and disorder to the taxpayer are estimated to be between £8bn and £13bn.

2.02 The majority of people drink responsibly, but not enough has been done to enable local communities to take action against those that don't. It is vital that local communities – the public and their elected representatives – have the powers they need to tackle alcohol-related crime and anti-social behaviour whilst promoting local business and ensuring that those that drink responsibly are not unduly penalised. This challenge has to be achieved within the toughest economic climate for both the public sector and business that has been seen for decades.

2.03 In the past few years, legislation through the Licensing Act 2003, Violent Crime Reduction Act 2006 and Policing and Crime Act 2009 has been introduced to try and tackle the harms that arise from the misuse of alcohol. This legislation has not achieved the previous Government's objectives and has simultaneously introduced unnecessary additional burdens and bureaucracy in the system.

COALITION AGREEMENT

2.04 In the Coalition Agreement, the Government set out a clear programme of reform around alcohol licensing to tackle the crime and anti-social behaviour that is too often associated with binge drinking in the night-time economy. In particular, the Government set out the following five commitments which are covered in this consultation.

- We will 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.
- We will allow councils and the police to shut down permanently any shop or bar found to be persistently selling alcohol to children.
- We will double the maximum fine for under-age alcohol sales to £20,000.
- We will permit local councils to charge more for late-night licences to pay for additional policing.
- We will ban the sale of alcohol below cost price.

2.05 A sixth commitment to “review alcohol taxation and pricing to ensure it tackles binge drinking without unfairly penalising responsible drinkers, pubs and important local industries” is being taken forward separately by the Home Office and HM Treasury.

SHIFTING THE BALANCE OF RESPONSIBILITY FOR ALCOHOL RELATED CRIME AND DISORDER

2.06 All too often high streets are filled on a Friday and Saturday night with revellers who are not encouraged to take responsibility for their own actions. They drink to excess and expect the taxpayer to meet the cost of their overindulgence. The Government wants a fundamental shift in responsibilities. Central Government will no longer be the primary driver for reducing and addressing the problems of alcohol-related crime and anti-social behaviour. Local authorities and local communities will have a greater say in what happens in their local area and individuals will become increasingly responsible for their own actions. The Government is committed to challenging the assumption that the only way to change people's behaviour is through adding to rules and regulations. In future, solutions to address alcohol-related problems will be found locally, and by encouraging individuals to take responsibility for their own actions.

STRIKING THE RIGHT BALANCE – PROMOTING BUSINESS AND CRIME PREVENTION

2.07 The government is committed to striking an appropriate balance between supporting business and driving down alcohol-related crime and disorder. Encouraging innovation and supporting economic growth is vital during these challenging economic times. However, the two aims are not mutually exclusive as safer areas are more likely to be vibrant, attracting a greater range of people. There are numerous instances of local businesses working with the police and others to reduce alcohol-related harm whilst promoting their interests. Examples of this working in practice include the Retail of Alcohol Standards Group's Community Alcohol Partnerships which were successfully piloted in St Neots; Business Improvement Districts (BIDs); and the national Best Bar None (BBN) awards scheme.

2.08 BIDs are a public-private partnership in which businesses within a defined area pay a supplementary levy on their business rates, in

order to fund changes that will improve their trading environment and directly benefit their business. For many, this is achieved by implementing crime reduction initiatives that make the public feel safer and more inclined to visit. An excellent example of this initiative is Birmingham's Broad Street BID which covers the entertainment heart of the city. Amongst other things, the BID has developed town centre wardens, taxi marshalls and enhanced cleaning to tackle litter. During the BID's first year, police statistics showed a 60% reduction in general crime and a 28% reduction in violent crime (although it is not possible to conclude how much of the reduction was directly due to the BID).

2.09 The BBN award scheme was set up to acknowledge responsible and well run licensed premises. It provides an excellent way for the police to work with the licensed retail sector to raise standards and reduce crime. However, an additional benefit is that the high profile national awards ceremony attracts positive publicity for both the venue and the area. An excellent example of this is the Doncaster BBN scheme. An evaluation of the Doncaster scheme, carried out by the national BBN team, concluded that the scheme contributed to notable reductions in alcohol-related crime in Doncaster town centre, although the exact percentage amount could not be determined, because it was one of several evening economy measures that took place during this time. The evaluation noted that large reductions in violent offences were being recorded in the majority of BBN premises, and a number of additional benefits to licensed premises as a result of BBN accreditation were also noted.

2.10 Where these types of local schemes emerge the Government will encourage and support them, not interfere with them. Alongside this support, the role of Government is to ensure that the regulatory framework for alcohol reflects the needs of local communities, and empowers local agencies to act on their behalf. This is the focus of this consultation.

3. ABOUT THIS CONSULTATION

3.01 This consultation seeks views on proposals to deliver the Government's commitments on alcohol outlined in the Coalition Agreement. We are keen to hear from everyone who will be affected by the changes, including members of the public who are consumers of alcohol, those who are affected by alcohol-related crime, those that run or work in pubs, clubs, supermarkets and shops, criminal justice agencies, licensing authorities, and trade associations representing those who produce and sell alcohol. As the key commitments outlined have been published in the Coalition Agreement, this consultation primarily seeks views on the implications of implementing the proposals rather than inviting views on the commitments themselves.

3.02 This consultation runs for 6 weeks from 28 July to the 8 September and covers England and Wales, where these proposals apply. The Government has already consulted a number of key partners prior to publishing this consultation, which has included holding 8 meetings with over 55 stakeholders from the on and off trade, alcohol producers, police and local authorities, health and voluntary sectors.

3.03 Information on how to respond to this consultation can be found on the Home Office website at <http://www.homeoffice.gov.uk/about-us/consultations/>. Responses can be submitted online through the Home Office website or by post by sending responses to:

Home Office - Alcohol Strategy Unit,
4th Floor Fry Building,
2 Marsham Street,
London,
SW1P 4DF

You should contact the Home Office Alcohol Strategy Unit by email at Alcohol.consultation@homeoffice.gsi.gov.uk if you require a copy of this consultation paper in any other format, e.g. Braille, Large Font, or Audio.'

DEVOLVED ADMINISTRATIONS

3.04 As most of these new measures will be introduced through the Police Reform and Social Responsibility Bill and include amendments to the Licensing Act 2003, they will only apply to England and Wales. We are yet to decide on how the ban on below cost sales of alcohol will be implemented. Were this ban to be implemented through the Mandatory Code of Practice for Alcohol Retailers or the Licensing Act 2003, it would only apply to alcohol sold in England and Wales. However, there is the possibility that the ban could be implemented across the whole of the United Kingdom if a more appropriate means of introduction is identified.

IMPACT ASSESSMENT

3.05 The impact assessment which accompanies this consultation sets out further details of the estimated benefits and costs, including financial costs. Where costs have been estimated, these should be viewed as indicative only.

4. LICENSING LEGISLATION

4.01. The Licensing Act 2003 became law on 24 November 2005, and regulates licensable activities and qualifying club activities. These activities include:

- The sale by retail of alcohol;
- The supply of alcohol by or on behalf of a club to, or to the order of, a member of the club; and
- The sale by retail of alcohol by or on behalf of a club to a guest of a member of the club for consumption on the premises where the sale takes place.

4.02. Licensable activities also include the provision of regulated entertainment and late night refreshment (Schedules 1 and 2). An authorisation is required in respect of any licensable activity; authorisation can comprise a premises licence, club premises certificate or temporary event notice and there can be one or more authorisations for the same premises. The processes and procedures governing each form of authorisation are contained in Part 3 (premises licences), Part 4 (club premises certificates) and Part 5 (permitted temporary activities) of the Act.

4.03. The Act introduced a single licence scheme for licensing premises and gave licensing authorities (in the form of a committee of not less than ten nor more than 15 members of the local authority which has responsibility for both personal licences to sell alcohol and premises licences) four licensing objectives, to ensure that licensable activities are carried out in the public interest.

4.04. A licensing authority can be a district or county council, London borough or one of the other bodies listed in section 3(1) of the Act, and its area is defined by reference to that of the corresponding local authority. The licensing authority must carry out its functions under the Act (licensing functions) with a view to:

- promoting the licensing objectives; and
- having regard to the statement of its licensing policy and licensing guidance issued by the Secretary of State.

4.05. The four licensing objectives are:

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

4.06. The Act enabled flexible opening hours for premises, consideration of the impact of opening hours on local residents and businesses, and gave local residents and businesses the right to make representations about applications. These representations must be based on the fact that one or more of the licensing objectives is being undermined.

4.07. A “responsible authority” (Police, Fire, Health & Safety, Planning, Environmental Health, Child Protection or Trading Standards) or an “interested party” (a person living or involved in business in the vicinity of the premises or a representative body of either) may make representations against an application or apply for a review of a licensed premises providing these objections pertain to the licensing objectives as listed above. A 28 day period is allowed for other responsible authorities or interested parties to also make representations. A hearing is held and those who expressed concerns are given the opportunity to present the issues in front of the licensing committee members. As a result of the hearing for either a licence application or review, the committee will make a decision; this may include refusing or revoking a licence or placing additional conditions on the licence.

5. GIVING MORE LOCAL POWERS TO REFUSE AND REVOKE LICENCES

5.01. Under the provisions in the 2003 Licensing Act there is a fundamental presumption in favour of granting an application for a licence to sell alcohol, which makes it difficult for local authorities to turn down applications. The Government wants to overhaul the licensing system to empower local councils and the police to clamp down on binge drinking hotspots and irresponsible retailers.

5.02. The Government proposes to change the balance of the Licensing Act to make licensing authorities more pro-active and empowered to take decisions. Currently under the Licensing Act a licensing authority can only refuse or remove a licence, or impose conditions on the licence upon review, if it can be proved that this 'is necessary' for the promotion of the licensing objectives and if a relevant representation has been made by a responsible authority. Refusals on this basis are rare partly because the licensing authority is not a responsible authority under the Act.

5.03. To make existing powers stronger and more responsive to local needs, it is proposed that relevant licensing authorities are made responsible authorities under the Licensing Act (or given equivalent powers). This would empower them to refuse, remove or review licences themselves without first having had to have received a representation from one of the other responsible authorities. This will also benefit the Cumulative Impact Policies (see next chapter) because licensing authorities will be able to refuse an application without representation.

Consultation Question 1: What do you think the impact would be of making relevant licensing authorities responsible authorities?

5.04. In making determinations on new and existing licences, licensing authorities are currently required under the Licensing Act to demonstrate that these actions are 'necessary' for the promotion of the licensing objectives in their local area. This places a significant evidential burden on the licensing authority. The Government is considering amending the

Act to reduce the burden on licensing authorities from the requirement to prove that their actions are 'necessary', to empowering them to consider more widely what actions are most appropriate to promote the licensing objectives in their area. All decisions will remain within the framework of promoting the licensing objectives and not any area the licensing authority stipulates. The Government is also exploring possible changes to the licence application process, to shift the onus onto applicants to consider and demonstrate to the licensing authority in their application, how granting their licence application will impact on the local area, and how they will mitigate any potential negative impacts.

Consultation Question 2: What impact do you think reducing the burden of proof on licensing authorities will have?

Consultation Question 3: Do you have any suggestions about how the licence application process could be amended to ensure that applicants consider the impact of their licence application on the local area?

5.05. When determining an application for a premises licence, an application for a licence review or the granting of a personal licence, the licensing authority must have regard to relevant representations or objection notices (in the case of personal licence applications) from the chief officer of police. We propose to strengthen the weight that licensing authorities must give to police representations (including those voiced by the police at a hearing) and objection notices by amending the legislation to require licensing authorities to accept all representations and notices and adopt all recommendations from the police, unless there is clear evidence that these are not relevant.

Consultation Question 4: What would the effect be of requiring licensing authorities to accept all representations, notices and recommendations from the police unless there is clear evidence that these are not relevant?

INVOLVING THE COMMUNITY AND THEIR REPRESENTATIVES

5.06. Licensing authorities currently have to produce and publish a statement of licensing policy for each three year period, which they then have to have regard to when making a determination on a licence application. In producing this statement, the Licensing Act states that the authority must consult the chief police officer for the area, the fire authority and such persons as the authority considers representative of holders of premises licences, club premises certificates, personal licences and local residents and businesses. In reality, some licensing authorities do not consult widely and practitioners have stated that as a result, licensing statements can be too narrowly defined and not representative of the views and needs of the local community.

5.07. To overcome this, the statutory guidance will be revised to encourage licensing authorities to consult more widely when determining their licensing policy statement, without prescribing from the Centre the parties they must consult with. To support licensing authorities in doing this, simple templates for self-assessment (e.g. Those used successfully for the Purple Flag scheme) will be provided within the guidance.

5.08. The Licensing Act 2003 allows local residents to raise concerns regarding new licence applications or existing licensed premises. Local residents are classified as interested parties within the Act, and as such are able to make relevant representations to licensing authorities about the impact of licensed premises on the promotion of the licensing objectives in their area. Relevant representations are considered in the determination of new licence applications and may lead to reviews of existing licences. To reduce any uncertainty amongst residents as to whether or not they are in the vicinity of a premises – and therefore whether they are an interested party – the legislation will be amended to remove the requirement to show vicinity. This means that any person, body or business will be able to make a relevant representation on any premises, regardless of their geographic proximity.

5.09. Currently each local authority is required to have a petition scheme outlining how residents can submit petitions and how the local authority will respond.

Consultation Question 5: How can licensing authorities encourage greater community and local resident involvement?

Consultation Question 6: What would be the effect of removing the requirement for interested parties to show vicinity when making relevant representations?

PUBLIC HEALTH

5.10. The determination of licensing decisions gives little consideration to the views of local health bodies, such as Primary Care Trusts (or their equivalents), as they are not included as responsible authorities within the Licensing Act. This means that they are unable to make representations to the local licensing authorities regarding concerns about the impact of new licensed premises on NHS resources. Designating health bodies as a responsible authority under the Act would enable them to make representations about the impact of new or existing licensed premises on the local NHS (primarily A&E departments and ambulance services) or more generally the safety of the public within the night-time economy. The expectation is that such representations would be based on analysis of the types of data already used to identify problematic premises and local violence hot-spots (e.g. alcohol-related A&E attendances or emergency response statistics), which will reinforce the Coalition Agreement commitment to roll-out A&E data sharing.

Consultation Question 7: Are there any unintended consequences of designating health bodies as a responsible authority?

5.11. Preventing harm to the health of the public is not currently a licensing objective. The Government would welcome views on making the prevention of health harm a material consideration for licensing authorities, either as a fifth licensing objective or as a discretionary power available to the authority where there is a particular local problem. This could allow licensing authorities to take account of local density of premises and hours of sale, and links to local alcohol-related illness and deaths. For example, this could mean restrictions on additional alcohol licences or additional hours of sale, whether within a defined area or within the local authority. Or it could mean encouraging or requiring premises to display sensible drinking messages or to promote low or non-alcoholic drinks.

5.12. This could mark a significant change in approach from the current Act and could have significant implications for businesses that incur additional costs or burden resulting from these decisions, and for their customers. The Government seeks views on how local areas might use this power, the implications for the public, businesses and local services, and whether this approach would be fair, targeted and proportionate.

Consultation Question 8: What are the implications in including the prevention of health harm as a licensing objective?

5.13. The Government considers that there is a case to be made for including additional bodies as interested parties under the Licensing Act. While all individuals resident in the vicinity are entitled to make representations about licence applications or existing licensed premises, the Government considers the scope of interested parties should be increased to cover bodies such as school governors, housing associations and registered social landlords which may wish to make representations as a collective, rather than as individual citizens.

Consultation Question 9: What would be the effect of making community groups interested parties under the Licensing Act, and which groups should be included?

OVERHAULING THE APPEALS PROCESS FOR LICENCE APPLICATION DETERMINATIONS

5.14. The Licensing Act and accompanying guidance sets out the process by which an applicant can appeal against a licence determination. If the licensing authority rejects a new licence application, or an application to vary or transfer a premises licence, the applicant can lodge an appeal against the decision within 21 days of being notified of the determination. An applicant can also appeal against other licensing determinations including personal licence applications, Temporary Event Notices and closure orders. The appeal must be made to the magistrates' court for the petty sessions area. An appeal can be lodged if:

- the licensing authority has rejected the application or imposed conditions outside those specified in the operating schedule accompanying the application or imposed additional conditions necessary for the promotion of the licensing objectives; or,
- the licensing authority rejects an application or takes action to remove a licensable activity from the licence or refuses to specify an individual as a designated premises supervisor.

5.15. Section 181 and Schedule 5 of the Licensing Act 2003 provide for a right of appeal to the magistrates' court against the decisions of licensing authorities. The applicant can appeal a licensing determination on the above grounds. Under the Act, parties who have made relevant representations in regard to a licence application also have a right of appeal against the determination of the licensing authority if they believe that the licence should not have been granted, or that different or additional conditions should have been imposed. These grounds therefore give scope for appeals to be lodged for a number of reasons and increase the burden on both courts and licensing authorities to conduct the appeal.

5.16. If an appeal is lodged against a licence determination, currently the magistrates' court has a number of options when determining an appeal. They can dismiss the appeal, substitute for the decision any other decision the licensing authority could have made, or remit the case to the licensing authority to hear (and dispose of in accordance with the direction of the court).

5.17. If the magistrates' court hears the appeal, case law, which predates the Licensing Act 2003, indicates that the appeal is by way of rehearing (*Sagnata Investments Ltd v Norwich Corpn* [1971]). In doing so, the court will have to have regard to the licensing authorities' statement of licensing policy and guidance issued under section 182 of the Licensing Act. The appeals process therefore often takes the power away from the licensing authority to make the final decision on the application.

5.18. The Government is considering options to tighten the appeals process and ensure that fewer appeals are heard in court and that, where possible, the power for determining licensing decisions remains with the licensing authority throughout, while retaining appropriate procedural safeguards. Therefore we propose that remitting the case back to the licensing authority to hear should become the default position although the court will need to retain the power to dismiss the appeal or re-hear it if seen to be necessary. Any proposals taken forward will include safeguards to ensure that Article 6 ECHR rights to a fair trial are not compromised.

Consultation Question 10: What would be the effect of making the default position for the magistrates' court to remit the appeal back to the licensing authority to hear?

APPEALS BY APPLICANTS ON LICENCE REVIEWS

5.19. Reviews of a premises licence can be applied for by either responsible authorities or interested parties under the Licensing Act. Following the hearing, the licensing authority can take a number of actions including, modifying the licence conditions, removing the designated premises supervisor and

suspending the licence for a period of up to 3 months. However the decisions taken by the licensing authority at the review hearing do not take effect until any appeal is disposed of. There is evidence to suggest that some decisions are appealed against purely to ensure that the premises is able to trade during a profitable period (e.g. Christmas), and that the appeal may often be withdrawn once this period had passed. The Government considers that the sanctions imposed by a licensing authority should come into force when the holder of the premises licence receives the determination of the decision from the licensing authority, and that the sanctions should remain unless and until an appeal to the magistrates' court is successful.

Consultation Question 11: What would be the effect of amending the legislation so that the decision of the licensing authority applies as soon as the premises licence holder receives the determination.

6. DEALING WITH THE PROBLEMS OF LATE NIGHT DRINKING

6.01. The Government wants to make sure that all local authorities have the power to address the pressures caused by extensive late night drinking, and the 24 hour licensing culture. The introduction of the Licensing Act has not given local residents any more say in how late their licensed premises can stay open, so more local flexibility is needed in determining closing times and setting the fees to reflect the costs of policing the late night economy.

6.02. The latest figures show that at 31 March 2009 there were 7,178 premises holding licences to retail alcohol for up to 24 hours. Of these, 845 were pubs, bars and nightclubs able to sell alcohol for consumption on the premises for up to 24 hours. The number of premises open to sell alcohol after midnight or between 3am and 6am is not precisely known. Excluding hotels, many of these premises do not actually sell alcohol during these hours, but merely have the authorisation to do so.

EARLY MORNING RESTRICTION ORDERS

6.03. The Crime and Security Act 2010 has an uncommenced power to allow licensing authorities to make Early Morning Restriction Orders (EMROs) which restrict the sale of alcohol between 3am and 6am by any outlet with a premises licence or club premises certificate, if it is considered necessary by the licensing authority for the promotion of the licensing objectives. The aim of EMROs is to provide licensing authorities with an additional tool to use to promote the licensing objectives in their local area, by restricting alcohol sales between certain times. The Government intends to commence this power with a significant amendment to allow local councils to decide between which hours (e.g. from midnight to 6am) they would like to prevent premises from opening, according to what they believe to be most appropriate for their local area. This differs from the current situation which limits local councils to issuing the order only between the hours of 3am and 6am. The change would ensure that licensing authorities are given the freedom to respond to the needs of their local community in determining when premises can sell alcohol.

6.04. The relevant legislation will also be amended so that an EMRO could be created if it was felt to be “beneficial” for the promotion of the licensing objectives rather than if it is felt to be “necessary” as is currently the case, in order to bring it in line with the proposed changes to the Licensing Act in the previous chapter.

Consultation Question 12: What is the likely impact of extending the flexibility of Early Morning Restriction Orders to reflect the needs of the local areas?

ALCOHOL DISORDER ZONES

6.05. Alcohol Disorder Zones (ADZs) were introduced via the Violent Crime Reduction Act 2006. They permit local authorities (with the consent of the police) to designate areas where there are problems with alcohol-related nuisance, crime and disorder as ADZs. In theory ADZs allowed councils to charge a levy on problem premises.

6.06. However, since the regulations for ADZs came into force in June 2008 no local authorities have chosen to establish one in their area. We have received feedback on ADZs from local authorities that indicates that this is due to the lengthy and costly process involved in setting up an ADZ, along with the negative impact creating an ADZ might have on an area's image.

6.07. Local authorities have shown by not setting up any ADZs that they do not feel this policy is a suitable tool for tackling alcohol-related crime. Accordingly, the Government intends to repeal the legislation enabling ADZs. The policy intention behind ADZs will be met more effectively through the new late night levy, which is covered later in this consultation.

Consultation Question 13: Do you have any concerns about repealing Alcohol Disorder Zones?

CUMULATIVE IMPACT POLICIES

6.08. Cumulative Impact Policies were introduced as a tool for licensing authorities to limit the growth of licensed premises in a problem area. They are a potentially useful tool for licensing authorities to limit the number of licensed premises, but can be used only when they have received relevant representations from a responsible authority on the potential cumulative impact. They are often considered to be bureaucratic for licensing authorities (particularly smaller ones) as the link to the licensing objectives means there is a high evidential burden on responsible authorities before one can be introduced. As of March 2009 there were only 129 Cumulative Impact Policies in place in England and Wales, and when in place they do not necessarily make it easier to refuse licence applications as relevant representations are still required in order for an application to be refused.

6.09. The Government proposes to simplify Cumulative Impact Policies and make them more responsive to local needs. It intends to remove the evidential requirement in order to reduce the burden on licensing authorities and encourage greater use of them. This will give greater weight to the views of local people as the licensing authority will not be constrained by the requirement to provide detailed additional evidence where such evidence is unavailable.

Consultation Question 14: What are the consequences of removing the evidential requirement for Cumulative Impact Policies?

LATE NIGHT LEVY

6.10. The Government intends to legislate to enable licensing authorities to charge a late night levy to help pay for the cost of policing the local night-time economy, where this is deemed necessary.

6.11. It is intended that the levy would be introduced as an additional charge for licensed premises that local authorities have the discretion to introduce. This would apply to premises that have a licence to open beyond a specified time (e.g. all premises that open after midnight on any day of the week).

6.12. It may be possible to use the late night levy either as a means of recovering additional costs related to late night policing (in which case it would be determined by the additional cost of policing in the area it is applied, and the number of premises the cost is divided between). It may also be possible to allow the local authority some discretion over the amount that is charged for the levy.

Consultation Question 15: Do you agree that the late night levy should be limited to recovery of these additional costs? Do you think that the local authority should be given some discretion on how much they can charge under the levy?

6.13. It may be possible to charge different amounts for premises with reductions given to premises that are involved in schemes which reduce additional costs and which are deemed to be "best practice" (for example Best Bar None).

Consultation Question 16: Do you think it would be advantageous to offer such reductions for the late night levy?

6.14. As well as policing, it would be possible to give local authorities the discretion to use the late night levy to fund the additional costs of other services related to the consequence of alcohol on the night time economy such as taxi-marshalling or street cleaning.

Consultation Question 17: Do you agree that the additional costs of these services should be funded by the late night levy?

AMENDING THE STATUTORY GUIDANCE TO MAKE IT CLEAR THAT MEASURES TO LIMIT OPENING HOURS CAN BE CONSIDERED

6.15. The Licensing Act 2003 introduced 24 hour alcohol licences, with the intention of allowing premises to adopt flexible opening hours. The objective was that consideration would be given to the impact of opening hours on local residents and businesses, and as part of this process, the Act gave local residents and businesses the right to make representations to the licensing authority to raise their concerns about new licence applications and the impact of existing licensed

premises on the local area. These representations must be based on the requirement that one or more of the licensing objectives is being undermined.

6.16. The aim behind introducing flexible opening hours was that through an extension of opening hours, concentrations of people leaving licensed premises at a set time should be reduced, with people dispersing more gradually from licensed premises at their different closing times. To this effect, in the guidance issued alongside the Licensing Act 2003, local areas were actively discouraged from implementing measures that could reduce this flexibility such as fixed closing times, staggered closing times and zoning; where fixed closing hours are set within a designated area. Many practitioners have reported that this advice is confusing and contrary to what local areas would like to do.

6.17. The Government intends to amend the guidance to make it clear to local areas that they can make decisions about the most appropriate licensing strategy for their area. Licensing authorities will be encouraged to consider using measures including fixed closing times, staggered closing times and zoning where they are appropriate for the promotion of the licensing objectives in their area. This change acknowledges the fact that different licensing approaches may be best for different areas and will empower licensing authorities to implement a licensing strategy that is best placed to meet the needs of their local area, based on their local knowledge.

Consultation Question 18: Do you believe that giving more autonomy to local authorities regarding closing times would be advantageous to cutting alcohol-related crime?

7. TEMPORARY EVENT NOTICES

7.01. A Temporary Event Notice (TEN) is a notification to the licensing authority that an individual intends to conduct licensable activities on a temporary basis for a period not exceeding 96 hours. There are several other statutory requirements which relate to a TEN, which restrict the number of persons allowed onto the premises, and the number of TENs that can be applied for in a year.

7.02. The TEN must be submitted to the licensing authority and the police at least ten working days in advance of the planned event. Only the police can object to a TEN, and only on crime prevention grounds. The police have 48 hours after the receipt of the TEN to object, and (unless the premises user agrees to modify the TEN) the licensing authority must hold a hearing to consider any objection that has been received. If the licensing authority decides that the objection is valid, it must issue a counter notice to the applicant at least 24 hours before the beginning of the event to prevent it going ahead.

7.03. The Government has recently amended the Licensing Act by Legislative Reform Order (LRO) on 19 July 2010 to extend the police objection period from 48 hours to two working days. The new arrangements, which come into force in October this year, will ensure that the police always have two full days to object to a TEN, even when it is submitted at the weekend or over a Bank Holiday. Restrictions on the use of LROs meant that it was not possible to use this mechanism to make more wide-ranging changes.

7.04. However the Government now has the opportunity to make a number of further simple changes to TENs in order to improve their effectiveness and ensure that events held using TENs are properly regulated. The proposed changes are: giving discretion to licensing authorities to apply existing licensing conditions for the period of a TEN when the applicant is already a licensed premises; extending the period of time that the police have to object (from two to five working days); and extending the right to object to other responsible authorities under the Act, including the right to object under the three other licensing objectives.

7.05. The Government also proposes to give the licensing authority the power to prescribe the exact address to where the TEN should be sent, as there is evidence to suggest that the service of the TEN to 'the relevant chief officer of police' results in delays in the proper person within the police receiving the details of the TEN. The licensing authority would be able to require that the papers be sent to a specific address for each of the responsible authorities under the Act, ensuring that TENs can be dealt with more efficiently.

7.06. The Government intends to amend the TENs structure to increase the period of notice that has to be given to a licensing authority in advance of the event. Currently this is 10 working days, but it is the Government's view that this should be increased to take account of the fact that extending the time that the police have to object to a TEN will impact upon the licensing authority's ability to schedule a hearing in advance of the event to consider any objections. The Government proposes that the legislation be amended so that TENs applied for where an existing premises licence is in operation would have to give a longer period of notice than applications for a TEN where there is no current premises licence. This could mean for example, that premises such as a pub or an off-licence would have to provide notice (for example) one month in advance, whereas a village fete or community event would be required to provide notice (for example) 15 working days in advance of the event.

7.07. The Government also proposes to restrict the number of TENs that a personal licence holder could apply for to 12 in one year. This would correspond with the number of TENs permitted at the same venue. The Government further intends to address the issue of the number of TENs that may be applied for in a single vicinity. Currently, it is possible for a field (for example) to have an unlimited number of TEN applications, with each TEN permitting up to 499 persons at each one. The Government proposes to amend the legislation to ensure that only one TEN would be able to be applied for in events such as this.

Consultation Question 19: What would be the consequences of amending the legislation relating to TENs so that:

- a. All the responsible authorities can object to a TEN on all of the licensing objectives?**
- b. The police (and other responsible authorities) have five working days to object to a TEN?**
- c. The notification period for a TEN is increased, and is longer for those venues already holding a premises licence?**
- d. Licensing authorities have the discretion to apply existing licence conditions to a TEN?**

Consultation Question 20: What would be the consequences of

- a. Reducing the number of TENs that can be applied for by a personal licence holder to 12 per year?**
- b. Restricting the number of TENs that could be applied for in the same vicinity (e.g. a field)?**

8. PROTECTING CHILDREN FROM THE HARM OF ALCOHOL

8.01. The quantity of alcohol consumed by children who drink alcohol has increased significantly in the past decade. The 2008 Smoking Drinking and Drug Use Survey found that the average weekly intake for pupils aged 11-15 who had drunk alcohol in the week before they were surveyed was 14.6 units, this figure has more than doubled since 1990. Beer accounted for half of pupils' weekly intake (7.6 units), followed by alcopops (2.8 units), spirits (2.1 units) and wine (1.8 units).

8.02. Children's drinking is putting increasing pressure on the police and the health services. High levels of alcohol consumption are associated with a range of health harms and high risk behaviours, including unprotected sex and offending. 12,718 children in England aged 11-17 were admitted to hospital in 2008/09 with an alcohol-related condition (3,554 aged 11-15 and 9,164 aged 16-17). The UK has one of the highest rates in the EU of admission to hospital or A&E due to alcohol use by 15-16 year olds.

8.03. Frequency of drinking is associated with offending in children and young people. The 2004 Offending, Crime and Justice Survey found those who drank alcohol once a week or more committed a disproportionate volume of crime, accounting for 37% of all offences reported by 10- to 17-year-olds but only 14% of respondents.

8.04. Despite the growing problem of children's alcohol misuse and the increasing impact on public services, not enough has been done at the local level to limit the availability of alcohol to children. The current powers do not go far enough to prevent selling alcohol to children. Although pupils' access to alcohol is typically by being given it by friends or parents, about half of pupils who have ever drunk also say that they do buy alcohol, despite being well below the age when they can legally do so.

8.05. The Government wants to take tougher action to penalise those premises found to be persistently selling alcohol to children. Currently, if a licence holder pleads not guilty to persistent underage selling and is prosecuted, then they face a fine of up to £10,000 and up to 3 months suspension of their alcohol licence. In

2008 there were 9 prosecutions with 4 fines issued. The average fine issued is £1,713. However, as an alternative to prosecution the police can give the licence holder the option to voluntarily accept a 48 hour closure notice which discharges criminal liability. The 48 hour suspension of alcohol sales was given 54 times in 2008/09. In addition, the police can ask the licensing authority to review the licence although it is not clear how many reviews have been conducted following a licence holder having been found persistently selling alcohol to children.

8.06. In the Coalition Agreement, the Government set out a commitment to double the fine for persistent under-age selling from £10,000 to £20,000. Alongside this, the Government is proposing to extend the period of voluntary closure that can be given by the police as an alternative to prosecution to bring this in line with the increased fine. Currently police can give a closure notice of up to 48 hours, but the Government is considering amending this closure period to set a minimum period of voluntary closure that can be given by the police of 168 hours (7 days) and is inviting feedback on this proposal and a suitable upper-limit for the voluntary closure period. The intention behind setting a minimum and upper limit for the period of voluntary closure is to give police the flexibility to decide upon an appropriate period of voluntary closure as an alternative to prosecution based on the type of premises being sanctioned. This could include consideration of the size of the premises and the type of business. This gives police the power to ensure that the sanction given is a proportionate penalty for the premises found to have committed the offence. Additional guidance will be issued to encourage police to use this sanction flexibly.

Consultation Question 21: Do you think 168 hours (7 days) is a suitable minimum for the period of voluntary closure that can be flexibly applied by police for persistent underage selling?

Consultation Question 22: What do you think would be an appropriate upper limit for the period of voluntary closure that can be flexibly applied by police for persistent underage selling?

8.07. The Coalition Agreement also set out a commitment to allow councils and the police to shut down permanently any shop or bar found to be persistently selling alcohol to children. Although licensing authorities already have the power to review a licence if a licence holder is found to be persistently selling alcohol to children, it is not clear in how many cases this review takes place. The Government is proposing amending the legislation to ensure that all premises found to be persistently selling alcohol to children will have their licence reviewed, regardless of whether they have opted for voluntary closure or prosecution. At the review process the licensing authority has the power to impose a 3 month licence suspension, impose further conditions on the licence or to revoke the licence. Ensuring that licence reviews are automatic in these circumstances gives licensing authorities the power to consider each case and if seen to be necessary, the power to make a decision to revoke the licence.

Consultation Question 23: What do you think the impact will be of making licence reviews automatic for those found to be persistently selling alcohol to children?

9. BANNING BELOW-COST SALES

9.01. There has been a growing concern over the last few years about how cheaply some alcoholic drinks are being sold. We are also aware of the public's unease and their perception of heavily discounted alcohol being a key contributory factor to unacceptable levels of alcohol-related crime and disorder – in many cases as a result of “pre-loading” in preparation for a night out.

9.02. According to the British Crime Survey, over a quarter of local residents perceive drunk and rowdy behaviour to be a problem in their area. There is a belief that most of the alcohol which contributes to this drunk and rowdy behaviour is irresponsibly priced and sold, allowing irresponsible drinkers to be able to get drunk cheaply. Examples of deals such as bottles of cider containing more than the weekly recommended unit guidelines but costing less than the price of a pint of beer in an average pub, continue to contribute to calls for action by Government. Victims of crime and anti-social behaviour, as well as senior figures from the enforcement and health sectors that have first hand experience of tackling the harms caused by excessive and irresponsible consumption, have long called on the Government to take firm action to tackle cheap sales of alcohol.

9.03. We are committed to ensuring that local people are able to enjoy all parts of their community without feeling intimidated by those who have drunk too much alcohol and to reducing the burden on frontline services of dealing with drunken behaviour. As set out in the Coalition Agreement, the government is carrying out a review of alcohol pricing and taxation and associated with this a ban on the sale of alcohol below cost. This consultation will inform the review. For more information go to: http://www.hm-treasury.gov.uk/alcohol_taxation.htm

LEGISLATIVE OPTIONS FOR BANNING BELOW-COST SALES

9.04. The definition of ‘cost’ has implications for the policy, powers required, enforcement and different incentives. The ‘cost’ of an alcoholic product differs between retail businesses as they negotiate their own prices with suppliers, have different internal cost structures and may

base overall profitability on a basket of goods. This can make it difficult for a retailer to prove, or an enforcement authority to check, whether a product has been sold ‘below cost’.

9.05. There are a number of ways in which such a ban might work, and Government must find an approach which is compatible with EU trade and competition laws and realistic to enforce. Most EU countries which have tried similar policies have banned selling below ‘net invoice price’ where the reference price is broadly the unit price on the invoice.

9.06. One option would be to specifically define an ‘average cost’. This might be easier to enforce than determining the true cost of each product, but could be a barrier to trade. An alternative option might be to introduce a mandatory licence condition by amendment to the Mandatory Code of Practice (Mandatory Licensing Conditions) Order 2010 through secondary legislation. Under these circumstances, it would be a breach of the licence condition to sell alcohol below what it cost the premises. This would have the advantage of not having to define what the cost is. Where responsible authorities or interested parties were concerned about the prices being offered in local premises this could trigger a licence review.

Consultation Question 24: For the purpose of this consultation we are interested in expert views on the following.

- a. **Simple and effective ways to define the ‘cost’ of alcohol**
- b. **Effective ways to enforce a ban on below cost selling and their costs**
- c. **The feasibility of using the Mandatory Code of Practice to set a licence condition that no sale can be below cost, without defining cost.**

10. REDUCING BURDEN AND BUREAUCRACY OF LICENSING AND COVERING ITS COST

INCREASES IN LICENCE FEES

10.01. Licence fees have not been increased since their introduction and therefore some sort of increase is long overdue. This would be hugely welcomed by local authorities who have long argued that their enforcement costs exceed their fee income. The government commissioned Elton Report in 2006 concluded that there was a £43m shortfall for the three year period 2004/05 to 2006/07 and recommended an increase of 7% for the three year period 2007/08 to 2009/10. This has never happened and the Government therefore proposes to enable local authorities to increase the licence fees so that they are based on full cost recovery.

10.02. The Government also acknowledges that adopting a tougher licensing regime as outlined in these proposals may lead to an increase in the number of licence reviews conducted, and a subsequent risk of increased burden on local licensing authorities. Any additional burdens on licensing authorities should also be reflected in the level of licensing fees.

Consultation Question 25: Would you be in favour of increasing licence fees based on full cost recovery, and what impact would this have?

AUTOMATIC REVOCATION OF LICENCE FOR NON-PAYMENT OF FEES.

10.03. The automatic revocation of licences for non-payment of fees is a simple change that could save local authorities many thousands of pounds currently spent in recovering unpaid annual fees through councils' own recovery sections and bailiffs. A precedent can be found for it in the Gambling Act. The Government proposes to amend the legislation so that a premises licence is automatically revoked if the premises has failed to pay the annual fees.

Consultation Question 26: Are you in favour of automatically revoking the premises licence if the annual fees have not been paid?

DEREGULATION

10.04. In April 2010, the previous administration enacted a Mandatory Code of Practice (Mandatory Licensing Conditions) Order 2010 for Alcohol Retailers, which was intended to be introduced in two stages. The first stage, which took place in April 2010, imposed conditions on licensed premises to:

- (a) Ban irresponsible promotions in the on-trade
- (b) Ban dispensing alcohol directly into the mouths of customers
- (c) Ensure that free tap water was available in all licensed premises in the on-trade

10.05. The legislation for the Mandatory Code contained two further conditions for licensed premises. These will be introduced on 1 October 2010. These conditions were delayed to give business more time to prepare and will mandate all licensed premises to:

- (d) Ensure they have an age verification policy in place
- (e) Ensure they are able to offer smaller servings of beer, wine and spirits.

10.06. As the regulations have been enacted, it is not possible to prevent d) and e) coming into force in October. However, the Government believes strongly that regulation should only be used as a last resort, and that alternatives to regulation should be used wherever possible. We want to take the opportunity of this consultation to give people the chance to comment on the necessity, cost, and impact of the provisions outlined in the mandatory code.

Consultation Question 27: Have the first set of mandatory conditions that came into force in April 2010 had a positive impact on preventing alcohol related crime?

Consultation Question 28: Would you support the repeal of any or all of the mandatory conditions (conditions (a) – (e) above)?

10.07. The Government is also interested in further de-regulating the Licensing Act in order to reduce the administrative burden both on business and licensing authorities. For example the application forms for both a premises licence and a TEN could be reduced, and the requirement on the licensing authority to determine and publish a statement of licensing policy every three years could be removed.

Consultation Question 29: Would you support measures to de-regulate the Licensing Act, and what sections of the Act in your view could be removed or simplified?

11. RESPONSES TO CONSULTATION

11.01. A list of the consultation questions included in this document is below.

- Consultation Question 1: What do you think the impact would be of making relevant licensing authorities responsible authorities?
- Consultation Question 2: What impact do you think reducing the burden of proof on licensing authorities will have?
- Consultation Question 3: Do you have any suggestions about how the licence application process could be amended to ensure that applicants consider the impact of their licence application on the local area?
- Consultation Question 4: What would the effect be of requiring licensing authorities to accept all representations, notices and recommendations from the police unless there is clear evidence that these are not relevant?
- Consultation Question 5: How can licensing authorities encourage greater community and local resident involvement?
- Consultation Question 6: What would be the effect of removing the requirement for interested parties to show vicinity when making relevant representations?
- Consultation Question 7: Are there any unintended consequences of designating health bodies as a responsible authority?
- Consultation Question 8: What are the implications in including the prevention of health harm as a licensing objective?
- Consultation Question 9: What would be the effect of making community groups interested parties under the Licensing Act, and which groups should be included?
- Consultation Question 10: What would be the effect of making the default position for the magistrates' court to remit the appeal back to the licensing authority to hear?
- Consultation Question 11: What would be the effect of amending the legislation so that the decision of the licensing authority applies as soon as the premises licence holder receives the determination.
- Consultation Question 12: What is the likely impact of extending the flexibility of Early Morning Restriction Orders to reflect the needs of the local areas?
- Consultation Question 13: Do you have any concerns about repealing Alcohol Disorder Zones?
- Consultation Question 14: What are the consequences of removing the evidential requirement for Cumulative Impact Policies?
- Consultation Question 15: Do you agree that the late night levy should be limited to recovery of these additional costs? Do you think that the local authority should be given some discretion on how much they can charge under the levy?
- Consultation Question 16: Do you think it would be advantageous to offer such reductions for the late night levy?
- Consultation Question 17: Do you agree that the additional costs of these services should be funded by the late night levy?
- Consultation Question 18: Do you believe that giving more autonomy to local authorities regarding closing times would be advantageous to cutting alcohol-related crime?
- Consultation Question 19: What would be the consequences of amending the legislation relating to TENs so that:
 - a. All the responsible authorities can object to a TEN on all of the licensing objectives?
 - b. The police (and other responsible authorities) have five working days to object to a TEN?
 - c. The notification period for a TEN is increased, and is longer for those venues already holding a premises licence?
 - d. Licensing authorities have the discretion to apply existing licence conditions to a TEN?

- Consultation Question 20: What would be the consequences of:
 - a. Reducing the number of TENs that can be applied for by a personal licence holder to 12 per year?
 - b. Restricting the number of TENs that could be applied for in the same vicinity (e.g. a field)?
 - Consultation Question 21: Do you think 168 hours (7 days) is a suitable minimum for the period of voluntary closure that can be flexibly applied by police for persistent underage selling?
 - Consultation Question 22: What do you think would be an appropriate upper limit for the period of voluntary closure that can be flexibly applied by police for persistent underage selling?
 - Consultation Question 23: What do you think the impact will be of making licence reviews automatic for those found to be persistently selling alcohol to children?
 - Consultation Question 24: For the purpose of this consultation we are interested in expert views on the following.
 - a. Simple and effective ways to define the 'cost' of alcohol
 - b. Effective ways to enforce a ban on below cost selling and their costs
 - c. The feasibility of using the Mandatory Code of Practice to set a licence condition that no sale can be below cost, without defining cost.
 - Consultation Question 25: Would you be in favour of increasing licence fees based on full cost recovery, and what impact would this have?
 - Consultation Question 26: Are you in favour of automatically revoking the premises licence if the annual fees have not been paid?
 - Consultation Question 27: Have the first set of mandatory conditions that came into force in April 2010 had a positive impact on preventing alcohol-related crime?
 - Consultation Question 28: Would you support the repeal of any or all of the mandatory conditions?
 - Consultation Question 29: Would you support measures to de-regulate the Licensing Act, and what sections of the Act in your view could be removed or simplified?
- 11.02. The information you send us may be passed to colleagues within the Home Office, the Government or related agencies.
- 11.03. Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000, the Data Protection Act (DPA) 1998 and the Environmental Information Regulations 2004.
- 11.04. If you want other information that you provide to be treated as confidential, please be aware that, under the Freedom of Information Act, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.
- 11.05. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.
- 11.06. The Department will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

ANNEX A

CONSULTATION CRITERIA

The Consultation follows the Government's Code of Practice on Consultation – the criteria for which are set out below:

Criterion 1 – When to consult – Formal consultation should take place at a stage when there is scope to influence the policy outcome.

Criterion 2 – Duration of consultation exercises – Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.

Criterion 3 – Clarity of scope and impact – Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

Criterion 4 – Accessibility of consultation exercises – Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

Criterion 5 – The burden of consultation – Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

Criterion 6 – Responsiveness of consultation exercises – Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

Criterion 7 – Capacity to consult – Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

The full Code of Practice on Consultation is available at: <http://www.berr.gov.uk/whatwedo/bre/consultation-guidance/page44420.html>

CONSULTATION CO-ORDINATOR

If you have a complaint or comment about the Home Office's approach to consultation, you should contact the Home Office Consultation Co-ordinator, Nigel Lawrence. Please DO NOT send your response to this consultation to Nigel Lawrence. The Co-ordinator works to promote best practice standards set by the Government's Code of Practice, advises policy teams on how to conduct consultations and investigates complaints made against the Home Office. He does not process your response to this consultation.

The Co-ordinator can be emailed at: Nigel.Lawrence@homeoffice.gsi.gov.uk or alternatively write to him at:

Nigel Lawrence, Consultation Co-ordinator
Home Office
Performance and Delivery Unit
Better Regulation Team
3rd Floor Seacole
2 Marsham Street
London
SW1P 4DF

Swindon Borough Council submission to Home Office consultation 'Rebalancing the Licensing Act'

We welcome the principles underlying the proposed overhaul of the legislation and the imagination which has been shown in many of the points of detail. There are some gaps and some unintended consequences, which we will address in our detailed responses to the questions which have been posed.

Question 1: What do you think the impact would be of making relevant licensing authorities responsible authorities ?

Some clarity is needed over what this would mean. Empowering licensing officers to bring their professional expertise to bear by making recommendations and providing a detailed context for decision-making would be a major boost to the interests of local communities, whilst enabling a more forthright defence of local businesses against complainants who have a hidden agenda. At present, the agenda is set in an arbitrary way by the scope of lay representations, which are generally of a very poor standard evidentially, notwithstanding the very real concerns which they attempt to express. Leaving discretion entirely in the hands of licensing officers or making their discretion subject to political control would undermine trust and the important partnership between officers and elected members. Members of the Licensing Committee should have the power to request that any licence is 'called in'. It may be appropriate to have such requests sanctioned by the Chair of the committee, although that might properly be a matter for local discretion.

The main impact of this move would be to speed up examination of a problem, if the responsible authorities are dragging their heels on bringing a review. Such delays do happen. The danger of course is that the licensing authority will be left high and dry, with responsible authorities refusing to supply any data by way of further representations. The matter having been heard without proper backing, further examination of the problem would be blocked. Where the licensing authority itself launches a review, a formal obligation should be placed on any other nominated responsible authority identified by the authority as being a key player to provide a comprehensive report on the situation from their perspective, where a proper amount of information has not been provided in the form of a representation. In other words, they should not be allowed to sit on their hands, on the basis that it was "not their idea".

A possible unintended consequence of this proposal is that responsible authorities may deliberately keep licensing officers in the dark, so as not to provide them with the ammunition needed for a review. Any such behaviour should lay those individuals and organisations open to disciplinary sanctions.

Question 2: What impact do you think that reducing the burden of proof on licensing authorities will have ?

There is a real risk of any change in this regard being illusory. At present, hearings are supposed to be a relatively informal directed 'discussion'. It is possible to conduct them in that way but the reality is always that the rigours of appeal and potential judicial review force them into the straitjacket of highly formalised judicial structures. Changing the rules for evidence in hearings would not necessarily create the same flexibility further up the line. In reality, all hearings are conducted on the basis that legal challenge is a significant risk. The need to protect taxpayers' money means that a proper level of caution is exercised. It has been suggested that requiring all off licences to label bottles and cans indelibly to identify the seller would greatly advance the licensing objectives. At present, licensing authorities are dissuaded from this by the requirement to show that it is 'necessary'. If this is amended to 'desirable' the case is self-evident. The challenge then is whether it is a reasonable and proportionate burden. This is one of several areas in which a national lead is more appropriate than the exercise of local discretion. If it is a good idea it should apply everywhere.

Question 3: Do you have any suggestions about how the licence application process could be amended to ensure that applicants consider the impact of their licence application on their local area ?

One of the key aims of the review is to cut out some of the huge weight of gratuitous bureaucracy associated with making an application. The danger of this proposal is that it could mound up yet more red tape. For the benefit of applicants and authorities alike, it would be helpful to have a range of standard templates available, setting out a model scenario and model safeguards. The previous administration baulked at 'standard conditions' but the reality is that off the peg solutions are efficient and elegant. They would allow for some fast-tracking, where the proposal is a standard one. An off-licence and general store on a deprived estate in Swindon is the same as one in Colchester or Exeter. There is no need to re-invent the wheel. The same is true of a high street department store selling hampers with wine included at Christmas. "This is [for example] a standard 11b type application" should be enough to encompass at least 80% of applications, saving a huge amount of administrative effort and freeing up resources to concentrate on areas of real challenge. To some extent, this simplification could encourage the adoption of low risk models, such as closing an off licence in the early evening. Whether submitted by amateurs or professionals, the quality of licensing applications is typically very low. Experience has shown that without explicit prompts, submissions usually have little coherence or relevance. In the more complicated cases, it might be possible to take the nearest match available from the set of standard templates and then address the differences from there. Left to their own devices, applicants will never refer to or consider the nature of the area in which they wish to operate. They will do so only if they are asked explicit questions. The inevitable consequence of doing so would however be to place a massive burden on public authorities. Applicants will expect relative crime statistics to be provided to them by the police and they will expect noise enforcement teams to draw up sound-proofing measures for

them. In some cases, they will resort to the Freedom of Information Act to force public authorities to do free consultancy work for them.

Question 4: What would the effect be of requiring licensing authorities to accept all representations, notices and recommendations from the police unless there is clear evidence that these are not relevant ?

This suggestion supposes that submissions from the police are always coherent, properly evidenced, proportionate, reasonable and constructive. The proposal is a potentially dangerous one. It could facilitate the bullying of businesses by the police and make possible wide disparities in practical policy brought about by little more than the personality of a particular senior police officer. The police are a very powerful institution and giving them an effective right of veto in a judicial situation would be contrary to the principles of justice. To take an analogy, the police might wish a new department store not to be built, on the grounds that a new store means a new environment in which shop theft can take place – and hence more work for them to do. In the licensing context, if the police are wedded by tradition to policing the night time economy on Fridays and Saturdays but the real economy is evolving into a Thursday and Saturday phenomenon, should they be empowered to shape that economy to fit in with their habitual policing approach ? Licensing authorities must be allowed the right of coming to a view independently. A facility to issue diktats would encourage lazy thinking and lead to a lack of interest in engagement with businesses, to find constructive solutions. Relations between the police and businesses would be soured by this proposed approach, undermining trust in the police and harming partnership working. Sham hearings would undermine the credibility of licensing authorities. This proposal is not in accordance with democratic norms.

Question 5: How can licensing authorities encourage greater community and local resident involvement ?

At the level of “Are you happy about Britain’s binge drinking culture ?” the idea of local involvement has little meaning. Universal concerns require a universal response. Engagement will suffer all round if communities are encouraged to expect solutions at local level which in reality can be delivered only by government. That said, concerns which have a genuinely local dimension could be addressed more effectively than they are now. Information is provided at the moment only by public notices in local newspapers or in A4 format on premises. The former is successful only in providing a significant subsidy to the newspaper industry. It is tempting to think of bureaucratic solutions e.g. ‘licensing authorities / applicants shall send letters to the 100 nearest households’ but an such arrangement would be impossibly expensive and quite unthinkable in the current financial climate. Any thought of a specifically ‘licensing’ mechanism is probably misguided. The model ought to be of an outreach worker heading out to a meeting of a heavily modified version of Neighbourhood Watch, asking “Is there anything interesting I can tell them about licensing issues ?”. Organic engagement is the way forward, rather than too great a reliance on formal protocols. The answer to this

question lies in better engagement across the board. Formalism may divert attention from that debate because it represents the easy way out.

Question 6: What would be the effect of removing the requirement for interested parties to show vicinity when making relevant representations ?

Rather than giving more power to local communities, this would place a new weapon in the hands of campaigners and eccentrics. Inevitably, it would shift the debate away from specifics and onto the ground of moral argument and political discourse. Since representations normally trigger hearings, the workload of licensing committees would increase many times over, bringing massive new pressures to bear on finances and stretching member resources to well beyond their limit. From the perspective of the 'genuine' local resident, any gain would be largely illusory. The change as proposed would have a direct impact on the admissibility of comments. It would however have no impact whatever on the weight which will be given to comments, based on the immediate practical consequences to the particular complainant. Concerns expressed by someone who lives next door will be taken very seriously. Concerns expressed by someone who lives a mile away are likely to be ignored. Do we take into account the views of ex pats living in France ? If the rule is that the person making representations must live in the borough, that will empower someone who lives six miles away but disenfranchise someone else who lives 500 metres away. The test should be one of 'direct material effect' rather than the arbitrary 'in the vicinity'.

Question 7: Are there any unintended consequences of designating health bodies as a responsible authority ?

Self-evidently there are. Application procedures are already hopelessly top-heavy and there are far too many responsible authorities. Bombarding health bodies with paperwork, none of which has any practical relevance, would constitute an appalling waste of resources and get in the way of providing health services. We already have this situation with Child Protection Departments, added to the list with no thought to the consequences. They throw away copied applications, as would health bodies. On those rare occasions when they intervene, they do so through their police partners, who have responsible authority status and have routine experience of submitting reviews. This suggested bureaucratic fix is a mistake. Giving health bodies consultee status will burden everyone with more paperwork. What would be genuinely useful is to grant them a right to make representations, which they can do if they are given interested party status. There is a case that they should be able to compel other parties to deliver data but this can be achieved as described previously, by giving licensing officers a power to require responsible authorities to deliver reports.

Question 8: What are the implications in including the prevention of health harm as a licensing objective ?

This is a laudable idea but it has inherent difficulties. There is a clear indirect, general link between the consumption of alcohol and the health of the nation. The linkages are a matter for political discourse and epidemiological analysis. Since licensing operates at the level of individual premises, there is little scope for addressing generalised problems. In a busy high street, it is already very difficult to hold responsibility for disorder in the street to any one bar. Making any sense of the linkage between a particular off licence and general trends in cirrhosis of the liver would be virtually impossible. These concerns feed naturally into wider public policy and the remedial mechanisms are principally around price and availability. It is possible, for all practical purposes, for a pub to operate without any conflict with the four existing licensing objectives. With health effects it is much more a case of containable, socially acceptable harm. There are relatively small numbers of town centre pubs and estate pubs which cater throughout the day for a significant number of (overwhelmingly) men in their 40's and 50's, often allegedly 'builders' who sit and drink for hour after hour, often from early in the morning. Daytime disorder in those premises is rare but these individuals clearly have a degree of alcohol dependence, sufficient to harm their health. Some of them are street drinkers. Others will soon become street drinkers. If we close those bars during the day do we help by cutting out one of the key stages in developing severe alcohol dependency or do we displace the customers to park benches where they will be much more of a nuisance ? Without a power to require compulsory health screening of the customers, powers framed around 'health' would be elusive. Adding a 'health' licensing objective is going too far. Primary responsibility will always rest with government and be the subject of social policy. A distinction could usefully be made between acute health consequences such as alcohol poisoning and injury [a formal clarification that public safety encompasses this] and morbidity, where the policy response is necessarily universal.

Question 9: What would be the effect of making community groups interested parties under the Licensing Act, and which groups should be included ?

To a large extent, this is about variations in the practice of licensing authorities. We have always taken it for granted that church councils, schools governing bodies etc. were entitled to comment. The provision should be as open as possible, including an bona fide grouping. They should be defined not by what they are or how they are constituted but by how licensable activity impinges on them in a real and immediate sense. If it is simply that the idea of a lawful licensable activity offends their sensibilities they should not be given an opportunity to engineer a gratuitous public debate by making use of the Licensing Act.

Question 10: What would be the effect of making the default position for the magistrates' court to remit the appeal back to the licensing authority to hear ?

In the case of an error or impropriety on the part of the licensing authority, an agreed option to revisit the decision would be helpful. If a condition imposed

at a hearing is unclear, unenforceable or conflicts with another condition, it ought to be possible to tidy that up easily by the licensing committee Chair getting together with the licensing officer to sort out the problem. A seven day grace period would be useful. The logic of the default position suggested is to go straight to a 'second opinion' option, under a new panel. That would be a recipe for an instant doubling of the number of hearings. With the possibility of a 'proper' appeal blocked, the number of judicial reviews would mushroom. Costs and delays would then escalate far beyond those currently experienced with the magistrates courts. The ability of traders to cheat the taxpayer by slipping out of their responsibility to pay court costs (they routinely fold the liable company having shifted the assets into a new shell) is a major problem for local authorities. To prevent this behaviour, a bond of around £20k could be demanded of the appellant, first call on which would be any costs awarded against them. That would discourage appeals designed purely to 'play the system'.

Question 11: What would be the effect of amending the legislation so that the decision of the licensing authority applies as soon as the premises licence holder receives the determination ?

This would be welcomed as an option in the case of revocation, as this is only applied in the most serious cases. Otherwise the current arrangements should apply. Revocation is only resorted to in very serious cases, where the public are at real and immediate risk. Suspending the effect of that sanction, as at present, is equivalent to suspending a prohibition notice on an unfenced meat slicer. In many cases, a business will collapse as a result of revocation. The knowledge of that is very much in the minds of those who make the decision and there is no evidence that any panel takes such a momentous course of action on a trivial and unsupported basis. More often, it is late in the day before that entirely necessary action is taken. A decision on immediate effect should be in the hands of a court but there must be a provision which requires that an application from a licensing authority to that effect is heard in days.

Question 12: What is the likely impact of extending the flexibility of Early Morning Restriction orders to reflect the needs of the local areas ?

Such a move would be very popular indeed and would likely be taken up in some form or other by almost every local authority. There would be a very powerful counter reaction from the trade and a raft of judicial reviews would be taken as test cases. Their hope would be that by threatening a few with financial disaster, they would be able to force the rest into line and thereby neutralise the measure. To have any realistic prospect of actually empowering local authorities, they would need guaranteed access to a centrally held pot of money in order to fight the challenge, subject of course to their having proceeded properly within the legal framework provided.

Question 13: Do you have any concerns about repealing Alcohol Disorder Zones ?

No. The mechanism was unworkable and did not offer any lasting solution. It has not been taken up anywhere and there is no realistic prospect that such a zone will ever be implemented.

Question 14: What are the consequences of removing the evidential requirement for Cumulative Impact Policies ?

Again, this would be an illusory change. Irrespective of any changed wording, licensing authorities would be cognisant of the danger of judicial review and would self-impose a requirement for rigorous evidence.

Question 15: Do you agree that the late night levy should be limited to recovery of these additional costs ? Do you think that the local authority should be given some discretion on how much they can charge under the levy ?

If local authorities have to prove what costs are 'additional' or if there is local discretion on the scale of fees, the risk of legal challenge will be very high. Fixing and recovering these fees would be a local authority responsibility but the main benefit is expected to go to the police. All of the financial risk therefore rests on the shoulders of the local authority who stand to gain little and none of the risk rests with the police who stand to gain a lot. That disparity was a major factor in the refusal to engage with Alcohol Disorder Zones. The police must shoulder the risk, in proportion with how much they receive. Otherwise, this scheme will sink too. To avoid a postcode lottery and to head off the inevitable rash of legal challenges, fees should be prescribed by statute, with no local discretion. In whatever form, the amount that could realistically be collected in this way would be trifling, compared with the actual costs incurred by the public authorities. It might cover the cost of one or two weekends but not much more than that. It is on the wrong scale. A heavy additional tax on all alcohol sold after midnight, no matter where it is bought, would address the true scale of the problem. A late night levy is incapable of bringing in anything like the £3 billion + which is needed to mitigate the costs of policing, cleansing and remedial health care.

Question 16: Do you think it would be advantageous to offer such reductions for the late night levy ?

The late night levy is a blunt instrument, just as Alcohol Disorder Zones would have been. Schemes might come into being specifically in order to generate discounts. All schemes go in cycles of greater or lesser effectiveness and need to be renewed periodically. There will be times when they offer little. Different businesses put in a varying commitment. There is a danger of a complicated regime, with a burden of dealing with multiple challenges and requests for re-evaluation. The best approach is to keep it very simple. It would be better to have a universal principle that drinking alcohol after midnight is challenging behaviour, which merits a levy to public funds, in proportion with the amount consumed by a particular individual. A licensing levy will not be visible to individuals or be linked in any way to their actions.

Question 17: Do you agree that the additional costs of these services should be funded by the late night levy ?

It would not be practicable to recover costs on the scale required, by using a mechanism of this kind. There is a further problem that discount feeder bar chains and discounting supermarkets add greatly to the problem but would be able to walk away from the problem. This defect is carried over from Alcohol Disorder Zones. Their total failure to contribute would tie the hands of local authorities, at least in moral terms.

Question 18: Do you believe that giving more autonomy to local authorities regarding closing times would be advantageous to cutting alcohol-related crime ?

When alcohol-related incidents are plotted against time, a clear pattern emerges in which they become more frequent, more serious and more geographically concentrated. It is very clear that if the line is drawn at an earlier time, many incidents will be avoided. There is a case not only for licensing authorities to decree earlier closing times than apply now. There may be benefits in requiring bars to pause e.g. from midnight until 00:45hrs or to sell during that time only drinks which are relatively low in alcohol, to slow the pace of consumption.

Question 19: What would be the consequences of amending the legislation relating to temporary event notices so that ~

- a. all the responsible authorities can object to a TEN on all of the licensing objectives ?**

That would generate a huge and largely pointless burgeoning of bureaucracy. It is bad enough already with the paper-chase around premises licences. Allowing objections on noise grounds would be sensible. Rather than expand processes, it should be left to the licensing officer to prompt where there might be issues.

- b. The police (and other responsible authorities) have five working days to object to a TEN ?**

It would be sensible to give the police that greater opportunity to comment.

- c. The notification period for a TEN is increased, and is longer for those venues already holding a premises licence ?**

That is heading in the wrong direction overall. By far the greater number of TENs are to enable wine to be sold in the interval of a play or for a film to be shown at a youth centre. These are activities involving very little risk. This should be acknowledged either by granting a global exemption from the need for any form of consent or by shortening the notice period. The distinction is not between those premises which already hold a premises licence and those which do not. It is between bona fide community run events and business

activities conducted with a view to a profit. The TENs facility was not aimed at businesses initially but they are used inappropriately, for example to hold live music events in a beer garden every weekend during the summer, when a premises licence to that effect would be unthinkable. Authorisation for a cider stall at a market ought to be forthcoming within the space of a week but major extensions to pub licences should take a full 28 days.

d. Licensing authorities have the discretion to apply existing licence conditions to a TEN ?

Where an event held on a TEN goes badly wrong, the premises licence cannot be reviewed because it did not provide the authority. There should be an automatic link back to the premises licence, so that a TEN for a commercial premises is treated as an extension of the premises licence, for all practical and legal purposes.

Consultation question 20: What would be the consequences of

a. Reducing the number of TENs that can be applied for by a personal licence holder to 12 per year ?

Under the 1964 Act, only landlords could lay on a bar at short notice. Community groups had to apply well in advance. That enabled some landlords to diversify into providing that service. The 50 limit was designed to soften the blow at the loss of that advantage. It is now an anachronism and would be no loss. It is better for a community organisation to take the legal liability on itself, rather than devolve it onto a contractor invited onto their premises.

b. Restricting the number of TENs that could be applied for in the same vicinity (e.g. a field) ?

A convention has grown up, allowing a bar to be provided in the midst of a large event, provided that no more than 499 people can be accommodated in the bar area and that they are not permitted to wander elsewhere with a drink in their hand. This makes a mockery of the requirement for a premises licence, where an event is 'large'. There is confusion over whether three such bars (or five ?) can be set up using TENs, in a crowd of 20,000 people ? The Licensing Act 2003 almost completely ignored outdoor events and it applies to them only in a very crude manner. This minor detail pales into insignificance when set beside the gaping inadequacy of the Act when it comes to the management of large outdoor events.

Question 21: Do you think 168 hours (7 days) is a suitable minimum for the period of voluntary closure that can be flexibly applied by police for persistent underage selling ?

It is questionable whether the necessary staff training and tightening of procedures can be completed that quickly. If the action is initiated on a Saturday night, it will be a salutary reminder to customers if they turn up on the next Saturday (as is likely) and find that their favoured haunt is closed.

Ten days would be more appropriate, although multiple sales during one session should count as only one failure.

Question 22: What do you think would be an appropriate upper limit for the period of voluntary closure that can be flexibly applied by police for persistent underage selling ?

The maximum sanction which can be applied as a suspension by a licensing authority is three months. Since that is a sanction which can be pursued by means of review, a sensible maximum period for the sanction mediated by the police would be six weeks.

Question 23: What do you think the impact will be of making licence reviews automatic for those found to be persistently selling alcohol to children ?

In our case it will make no difference at all. We already properly use the powers available to us.

Question 24: For the purpose of this consultation we are interested in expert views on the following ~

a. Simple and effective ways to define the 'cost' of alcohol.

This approach is flawed. The large supermarkets will use their buying power to compel suppliers to provide them with a batch of bottles at a wholesale price of 10 pence a bottle and will sell them at 12 pence a bottle. It is already well established at the discount end of the club market to buy cans or bottles with an expired best before date for almost nothing and then sell them cheaply. The alcohol content is of course unchanged.

Alternative options would be to forbid the sale of alcohol at less than the cost of the duty, tax and typical container cost combined.

A stipulation could be made that no lager shall be sold for less than half of the average price of all lagers on sale in the establishment.

A requirement could be imposed that no alcoholic drink may be sold for any less than half the price of the cheapest soft drink available, volume for volume.

None of these formulations would be anti-competitive.

Question 25. Would you be in favour of increasing licence fees based on full cost recovery, and what impact would this have ?

A change of that kind would be welcomed. Devolving the setting of fees would result in a postcode lottery for applicants, additional work for licensing authorities and the prospect of legal challenges the cost of which could wipe out any benefit. We would welcome continuation of the current practice of

setting fees by statute, although on a more realistic basis. Naturally 'cost' depends on the scale of resources deployed. These need to be sufficient but not intrusive. It would be unreasonable to swamp leisure venues and then expect them to pay for the privilege. Linking funding to directly to 'Licensing' would have the unintended consequence of promoting silo working, with so-called 'licensing' inspections. It is now widely accepted that a generic, multi-disciplinary approach is more efficient and effective. It would be a mistake to undermine that. This is another reason for setting fees centrally – it fosters the right degree of flexibility and imagination.

Question 26. Are you in favour of automatically revoking the premises licence if the annual fees have not been paid ?

Very much so. Chasing bad payers is a drain on public funds. A further benefit would be to flush out those who operate a business under the umbrella of a premises licence which is not held by them, often at two or more steps away in terms of ownership. In some cases the licence holder has moved abroad. The only saving grace at the moment is that the actual business owner is not a party to review proceedings and has no right to defend a proposal to revoke. There is a loop-hole here though. Businesses do not have to hold a licence in their own name, in order to carry on trading. That should be remedied. Applicants should be barred from making any new applications while they still owe annual fees on an existing licence.

Question 27. Have the first set of mandatory conditions that came into force in April 2010 had a positive impact on preventing alcohol related crime ?

The new regulations were poorly drafted and are ambiguous. They control some harms inadequately but appear to penalise some activities which are innocuous. Review powers already exist and permit any matters related to the licensing objectives to be taken into account. The regulations add little and may indeed undermine intervention, by generating confusion. If there is a desire to have regulations of this kind, they should be re-drafted with greater clarity.

Question 28. Would you support the repeal of any or all of the mandatory conditions (a) to (e) above ?

Yes. By setting out to ban a few headline-grabbing but rare promotions, many legitimate activities have been called into question and other more common but worrying promotions have been granted a new legitimacy by virtue of not having been included. The regulations actually make enforcement more difficult, by creating unintended loop-holes.

Question 29. Would you support measures to de-regulate the Licensing Act and what sections of the Act in your view could be removed or simplified ?

- It was likely the original intent that it should be lawful to hold a temporary event notice, a premises licence and a club premises certificate in parallel became confused in translation, allowing multiple premises licences to be held simultaneously. In order to remove confusion and the frustration of enforcement activity, premises licences which overlap in place and /or time should not be permitted.
- As the statistics on reviews show, there are far too many responsible authorities. Copy applications are routinely binned on receipt by some agencies. Planning, Child protection, Health & Safety, Fire Brigades should be removed from the list. The licensing authority should be a responsible authority and should be empowered to act as a conduit for relevant representations from any source with something useful to say.
- The requirement to place a public notice in a newspaper is an expensive anachronism and should be scrapped.
- The requirement to 'keep a register' should be replaced with a specification of those matters to which the public have a right of access.
- The definition of licensable activities should be rationalised by deleting the seemingly meaningless 'facilities for' categories and bringing together the existing types of regulated entertainment into a. 'sporting', b. 'live music, karaoke and discos' and c. 'all the others'. That will simplify form filling and avoid a mass of surplus detail.
- Remove altogether from the definition of licensable activity – hospital in-patients, florists, stretch limo operators, seasonal mixed hampers, parent teachers dances, interval service at a community play etc.
- Remove the provisional statement procedures which are almost never used and serve no purpose.
- Remove the vagueness over who can hold a licence and the extent of their responsibilities.
- Require premises supervisors to 'supervise'.
- Impose ongoing responsibility on individual directors, to block avoidance by creating new front companies.
- A mechanism should be introduced, allowing for withdrawal of a review, with agreement of all parties.
- It should be left to licensing authorities to update licensing policies as they see appropriate, rather than on a set renewal date.
- Greater clarity should be given, around access by guests to premises with a club premises certificate.
- Clearer authority should be put in place to enable licensing authorities to dispose of seized alcohol.
- The Police should have the power to review a personal licence at any time, in the light of relevant convictions.
- The offence of buying alcohol on behalf of children is unenforceable and should be changed to an offence of supplying

alcohol to children, in the vicinity of premises where it has been bought. The problem at the moment is showing that money has changed hands and that the money was for the alcohol.

- **Remove the question about adult entertainment (since it has no consequences) or make the provision of adult entertainment a specific licensable activity.**

This page is intentionally left blank