



HILLINGDON  
LONDON



# Licensing Committee

## Councillors on the Sub-Committee:

Josephine Barrett, Chairman of the  
Licensing Committee (Chairman)  
Michael Bull, Vice-Chairman of the  
Licensing Committee (Vice-Chairman)  
David Allam  
Lynne Allen  
Janet Gardner  
Carol Melvin  
Andrew Retter  
Judy Kelly  
Elizabeth Kemp  
Peter Kemp

**Date:** TUESDAY, 19 JANUARY  
2010

**Time:** 10.00 AM

**Venue:** COMMITTEE ROOM 3 -  
CIVIC CENTRE, HIGH  
STREET, UXBRIDGE UB8  
1UW

**Meeting  
Details:** Members of the Public and  
Press are welcome to attend  
this meeting

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further information.**

Published: Monday, 11 January 2010

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# Agenda

- 1** Apologies for Absence
- 2** Declarations of Interest in matters coming before this meeting
- 3** To confirm that the items of business marked Part I will be considered in Public and that the items marked Part 2 will be considered in private
- 4** To agree minutes of the meeting held on 1st October 2009
- 5** The Policing and Crime Act 2009 in respect of an amendment to the Licensing Act 2003 to enable councillors to make representations report  
Presented by Sharon Garner, Licensing Officer.
- 6** An update on actions taken by the Metropolitan Police Service and Trading Standards in respect of actions taken by them in respect of sales of alcohol to underage persons report  
Presented by Sharon Garner, Licensing Officer
- 7** Sales of alcohol to underage persons via the internet or mail order  
Verbal update by Sue Pollitt, Trading Standards Manager
- 8** Attendance at Hearings by representatives of Responsible Authorities when they have not lodged a representation with the Licensing Authority  
Verbal update by Norman Stanley, Licensing Service Manager
- 9** Red and Yellow Card Scheme and Mandatory and Discretionary Conditions report  
Presented by Norman Stanley, Licensing Service Manager.
- 10** The Policing and Crime Act 2009 in respect of the adoptive provisions that will enable local authorities to control sex establishments report  
Presented by Stephanie Waterford, Licensing Officer
- 11** DCMS consultation on a proposal to amend the Licensing Act 2003 in respect of Licensing Statements, Interim Authority Notices and Temporary Event Notices report  
Presented by Norman Stanley the Licensing Service Manager
- 12** DCMS consultation on a proposal to amend the Licensing Act 2003 in respect of Personal Licences report  
Presented by Stephanie Waterford, Licensing Officer
- 13** Update on the progress of the implementation of the 2010-2013 Gambling Policy  
Verbal Update by Stephanie Waterford, Licensing Officer.
- 14** Updates from Licensing Service on Licensing Applications Granted  
Presented by Stephanie Waterford, Licensing Officer.

**15** The Licensing Service's customer satisfaction survey report

Presented by Linda Etherington, Licensing Officer

**16** Any Other Business - Street Trading

Following Full Council's decision to grant the Licensing Committee power to determine street trading applications this report needs to be considered urgently by the Licensing Committee in order to implement that decision. This agenda and the report below have been circulated under urgency procedures and less than 5 working days before the Licensing Committee meeting. The item of business will be considered if the Chairman agrees it as urgent.

## Minutes

Licensing Committee  
Thursday 1 October 2009  
Meeting held at High Street, Uxbridge, UB8 1UW



Published on:  
Come into effect on: Immediately (or call-in date)

### **Members Present:**

Councillors Dave Allam, Lynne Allen, Josephine Barrett (Chairman), Michael Bull (Vice-Chairman), Janet Gardner, Judy Kelly, Elizabeth Kemp, Peter Kemp, Carol Melvin and Andrew Retter

**Officers Present:** Natasha Dogra, Sharon Garner, Norman Stanley, Beejal Soni, Jaspal Wadhwa and Stephanie Waterford.

### **1. APOLOGIES FOR ABSENCE**

None.

### **2. DECLARATIONS OF INTEREST IN MATTER COMING BEFORE THIS MEETING**

None.

### **3. TO CONFIRM THAT ALL ITEMS MARKED PART 1 WILL BE CONSIDERED IN PUBLIC AND ALL THOSE MARKED IN PART 2 WILL BE CONSIDERED IN PRIVATE**

All items were Part 1 and were considered in public.

### **4. TO RECEIVE AND AGREE THE MINUTES OF 2 JULY 2009**

Officers informed the Committee that following the previous Licensing Committee meeting, a letter had been sent to Jean Palmer (Head of Planning and Community Services) by the Committee Chairman regarding "lack of representation by planning services in respect of applications for new premises licences or variations to existing licensed premises." A response was received from David Thackeray (Planning and Community Services). Officers relayed Mr Thackeray's response to the Committee as follows:

*As a Responsible Authority, planning is entitled to object to applications for new premises licences and/or variations to existing licensed premises, or at least to make representation. However, any such objection/representation must relate to one of the four prime licensing objectives (listed below) and no other.*

- 1) *Crime/ASB.*
- 2) *Noise and nuisance.*
- 3) *Protection of children.*
- 4) *Health and safety.*

*Planning could legitimately make representation on point 2 above but only if objections had been received and noise and nuisance issues were considered when a relevant planning application was determined.*

*The list of "Responsible Authorities" distributed by the licensing service will be amended to show the Head of Planning as the point of contact for the Planning Authority and James and his team will meet with Norman to discuss representation.*

The minutes were agreed by the Committee.

#### **5. GAMBLING ACT 2005 CONSULTATION – UPDATE**

Action By:

A consultation regarding the Council's Statement of Gambling Licensing review began in July 2009. Consultees included elected Members, Gambling Trade representatives, Responsible Authorities, Neighbouring Local Authorities, Local residents associations and Licensing Solicitors. A working group comprising of Licensing Officers, Consumer and Protection Officers, Licensing Lawyers, Democratic Services Officers and representatives from the Local Safeguarding Children Board and Metropolitan Police established that the current policy had worked well since its implementation in 2007. Five responses were received during the consultation period. Minor changes were made to the policy.

**Agreed:**

**The Committee agreed the Council's Statement of Gambling Licensing policy, complete with the minor changes made by the Licensing Service.**

#### **6. TO ADVISE MEMBERS OF CHANGES TO THE LICENSING ACT 2003 WITH REGARD TO MINOR VARIATIONS**

Action By:

The Committee were advised of changes made to the Licensing Act 2003 with regard to minor variations and the requirements for a Designated Premises Supervisor in Community Premises as a result of reforms promoted by the Department for Culture, Media and Sport (DCSM).

Officers advised Members that failure to respond to legislation changes or set delegations at an appropriate level could result in unworkable or avoidable licensing processes, and could have an efficiency impact on the Council. Due to the strict fifteen working day deadline for determining minor variations applications made under Section 41a or 86a of the Licensing Act, failure to delegate responsibility to officers could make the system unworkable and result in unnecessary hearings, refunding of prescribed fees and increased risk of legal challenges.

**To Note:**

**The Committee noted that a Designated Premises Supervisor at certain community premises could be replaced by a Management Committee.**

**Agreed:**

**The Committee agreed that delegated authority be granted to the Head of**



<p>from the relevant Responsible Authority attended the hearing.</p> <p><b>3. The Committee agreed the amended protocol for making representations at Sub-Committee hearings.</b></p>	
<p><b>8. CUMALATIVE IMPACT POLICY: UPDATE</b></p> <p>Officers advised Members of the outcome of enquiries regarding the introduction of saturation policies to a parade of shops. Where the number, type and density of licensed premises are unusually high, serious problems of nuisance and disorder had sometimes arisen or had begun to arise outside the premises. This had been described as the cumulative impact of the increasing capacity of all premises together.</p> <p>Officers informed the Committee that the effect of adopting a special policy of this kind would be to create a rebuttable presumption that applications for new premises licences or club premises certificates or variations that we likely add to the existing cumulative impact policy would normally be refused, following relevant representations, unless the applicant can demonstrate in their operating schedule that there will be no negative cumulative impact on one or more of the licensing objectives.</p> <p><b>To Note:</b>  <b>The Committee noted that in light of the limitation stated in Para 13.33 of the Guidance issued under section 182 of the Licensing Act, the Cumulative Impact Policies is <i>not</i> applied to a parade of shops specifically for concerns relating to off-licenses.</b></p>	Action By:
<p><b>9. RESPONSE TO CONSULTATION ON SELLING ALCOHOL RESPONSIBLY: UPDATE</b></p> <p>Officers informed the Licensing Committee about the response sent from Hillingdon in respect of the consultation document published by the Home Office entitled <i>Safe.Sensible.Social:- Selling alcohol responsibly. A consultation on the new Code of Practice for Alcohol Retailers</i>. Officers reminded Members of their response:</p> <ol style="list-style-type: none"> <li>1. The cost of re-issuing licenses and dealing with appeals</li> <li>2. The possible negative effect on businesses and local economy</li> <li>3. The difficulty of imposing discretionary conditions</li> <li>4. Additional discretionary conditions.</li> </ol> <p><b>To Note:</b>  <b>The Committee noted the update.</b></p>	Action By:
<p><b>10. RED AND YELLOW CARD SYSTEM REPORT: UPDATE</b></p> <p>Officers informed the Committee of proposals made by the Department of Culture, Media and Sport regarding a “red and yellow card” system. Under implementation of this system licensees caught performing illegal activities such</p>	Action By:



<p>as selling alcohol to underage children would not have their license revoked. Instead this first intervention would see further conditions imposed on the license holder and the license could be revoked for a set period of time. If a second intervention then took place the license would be fully revoked.</p> <p>Members expressed their concerns over resident feedback regarding this system. The public might have felt alcohol sale to youths was not being taken seriously by the Council, should this system be implemented. Members agreed that license holders caught selling alcohol to youths should have their license revoked in the first instance. The Committee requested further information regarding fixed penalties given to licence holders throughout the borough.</p> <p><b>Agreed:</b></p> <ol style="list-style-type: none"> <li><b>1. The Committee asked Licensing Officers to write on behalf of the Licensing Committee to the Metropolitan Police Service and the Trading Standards Team Leader to request details of any actions instigated by either of those two authorities in respect of sale of alcohol to young persons. Officers are then to provide this information to the full Licensing Committee at each quarterly meeting.</b></li> <li><b>2. The Committee agreed that Licensing Officers would respond to the Department of Culture, Media and Sport explaining that the London Borough of Hillingdon’s Licensing Committee did not intend to adopt their “Red and Yellow card” system, as they prefer to deal with cases individually.</b></li> </ol>	<p>Norman Stanley, Licensing Manager</p> <p>Norman Stanley, Licensing Manager</p> <p>Norman Stanley, Licensing Manager</p>
<p><b>11. METROPOLITAN POLICE BOTTLE MARKING SCHEME: UPDATE</b></p> <p>Officers updated the Committee on the Metropolitan Police Bottle Marking Scheme conducted by Sgt Anthony Bennett and the Safer Neighbourhoods Team in Uxbridge North and Hillingdon East scheme. Between June 2009 and August 2009, 13 premises took place in the scheme. The scheme was funded in full by the Metropolitan Police to the sum of £5,184.</p> <p>In summary, no benefits arose from the scheme as marked bottles could not be traced back to individual off licences due to lack of evidence. None of the premises wanted to continue the scheme due to the high costs and lack of advantages.</p> <p><b>To note:</b> <b>The Committee noted the report.</b></p>	<p>Action By:</p>
<p><b>12. UPDATE FROM LICENSING SERVICE ON LICENSING APPLICATION GRANTED</b></p> <p>Officers informed Members that from June 2009 till August 2009 the number of license applications received from clubs in the borough rose significantly. This could be due to clubs trying to increase profits by selling alcohol.</p>	<p>Action By:</p>

<p><b>To Note:</b>  <b>The Committee noted the statistics.</b></p>	
<p><b>13. INFORMATION ITEM: <i>NEW RESTAURANT HITS OPPOSITION TO DRINKS LICENCE, 2 SEPTEMBER 2009</i></b></p> <p>The information item was noted.</p>	<p>Action By:</p>
<p><b>14. ANY OTHER BUSINESS</b></p> <ol style="list-style-type: none"> <li>1. Members expressed their concern over the publicity of out-of-borough alcohol delivery services. Members were concerned that alcohol was being delivered to underage people by businesses located outside the borough. Legal Officers advised the Committee that if the alcohol supply was kept in the borough a license was required from the London borough of Hillingdon. Members requested further information regarding drink delivery services that operate in the borough. Licensing Officers agreed to provide Sue Politt with a letter requesting a test purchase from the drink delivery services.</li>   <li>2. Officers presented the Committee with a discussion paper on the role of Environment Protection unit in Licensing. Officers explained the internal procedure to deal with license applications and variations, which should produce better and more effective support to the Licensing Panel. It had been recognised that at a number of previous Licence hearings there had been insufficient information or representation provided by officers to assist members in processing the applications and to impose appropriate conditions relating to public nuisance. Legal officers advised Environmental Protection Unit officers that if they made a representation they must be present at the Sub-Committee hearing to answer questions from Councillors. Legal officers were requested to put this into writing and provide this to the Environment and Consumer Protection department.</li> </ol>	<p>Action By:</p> <p>Norman Stanley,  Licensing Manager</p> <p>Beejal Soni,  Legal Officer.</p>

The meeting closed at 11:55 a.m.

# Agenda Item 5

## Policing and Crime Act 2009

<b>Committee</b>	Licensing Committee	
<b>Officer Contact</b>	Sharon Garner	01895 277230
<b>Papers with report</b>	None	
<b>Ward(s) affected</b>	All	

### SUMMARY

A report to update the Licensing Committee on new legislation which affects the rights of Councillors to be able to make representations against applications under the Licensing Act 2003.

### RECOMMENDATION

**That the Committee note the report**

### INFORMATION

On 29<sup>th</sup> January 2010, new licensing powers will be implemented under the Policing and Crime Act 2009 which will amend section 13(3) and section 69(3) of the Licensing Act 2003.

Section 33 of the Policing and Crime Act 2009 allows any member of the Licensing Authority (any Councillor of an authority under the Licensing Act 2003) will be able to make representations against a new application for a premises licence or variation of a premises licence within their area.

It also allows members of the Licensing Authority to call premises licences and club premises certificates to be reviewed.

The Government will be producing guidance as to how to implement section 33 of the Act and it is anticipated that this will be published in January 2010.

If there is sufficient time before the next meeting (scheduled for the 19<sup>th</sup> January 2010), a full detailed report will be prepared for the Licensing Committee.

### FINANCIAL IMPLICATIONS

None

### LEGAL IMPLICATIONS

N/A

### BACKGROUND PAPERS

None

Licensing Committee  
Part I – Members, Public and Press

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# Agenda Item 6

## Actions taken by Metropolitan Police and Trading Standards regarding underage sales

**Committee**

Licensing Committee

**Officer Contact**

Sharon Garner

01895 277230

**Papers with report**

None

**Ward(s) affected**

All

### SUMMARY

A report to update the Licensing Committee on the actions taken by the Metropolitan Police Service and the Council's Trading Standards department concerning sales of alcohol to young persons.

### RECOMMENDATION

**That the committee note the report**

### INFORMATION

The Trading Standards Service carried out several underage alcohol test purchase operations in conjunction with the Metropolitan Police Service in 2009. Forty premises were visited for underage alcohol sales.

Where a sale took place the seller was issued with a police Penalty Notice for Disorder (PND). During the test purchase operations a total of 9 PND's were issued by the police to persons who sold alcohol to a person under 18. Trading Standards Officers witnessed these sales, and accompanying statements and exhibits were supplied to the police in support of the PND.

The premises where a sale to under age persons was witnessed and a PND was issued are as follows:

Ruislip Food & Wine, 92 Victoria Road, Ruislip  
Londis t/a VG, 153 Whitby Road, South Ruislip  
McCalls, 161 Whitby Road, South Ruislip  
AA News, 77 Station Approach, South Ruislip  
Vic Mart, 113 Victoria Road, Ruislip Manor  
Londis, 242 Yeading Lane, Hayes  
World Wines, 38 Station Road, Hayes  
HP Food & Wine, 115 Falling Lane, Yiewsley  
Yiewsley Superstore, 125 Falling Lane, Yiewsley

### Further actions taken

Following the illegal sale of alcohol made by licensed premises, the Trading Standards Service contacted the proprietor of the business and conducted a formal interview with the proprietor,

Licensing Committee

Part I – Members, Public and Press

premises licence holder and DPS regarding the sale to ensure that underage sales at the premises do not recur.

The meeting was substantive in advising them of their responsibilities to prevent underage sales and the consequences should they be found to be supplying alcohol to persons under 18.

*Following the meeting a further test purchase is carried out at the premises within 3 months of the interview and if alcohol is sold again to a person under 18 the Trading Standards Service may consider prosecution and/or to have the premises licence reviewed by the licensing committee.*

All the business's which illegally sold alcohol to children and were then revisited following the interview, did not re-offend.

*Complaints alleging that alcohol is being sold to children at licensed premises is similarly dealt with in the above manner. The proprietor, premises licence holder and DPS are formally interviewed and the premises are visited for underage sales within 3 months of the interview.*

The Trading Standards Service interviewed 4 retailers in 2009 and none were found to be selling alcohol to children following the interview and subsequent test purchase visit.

The Trading Standards Service also made representations in 2009 in support of an alcohol licence review made by the Metropolitan Police in October 2009 against World Wines, Station Road, Hayes which resulted in the licence being suspended for 3 months and further conditions being added to the licence.

Further test purchases for underage sales of age restrictive items, including alcohol, will be carried out in 2010.

Statistics will be collated from the Metropolitan Police and Trading Standards on a quarterly basis, relating to any test purchases and the result of any underage sales that are carried out in 2010 and these statics shall be reported to Full Licensing Committee accordingly.

## **FINANCIAL IMPLICATIONS**

None

## **LEGAL IMPLICATIONS**

N/A

## **BACKGROUND PAPERS**

None

# Agenda Item 9

## Red and Yellow Card System Report Update

<b>Committee</b>	Licensing Committee
<b>Officer Contact</b>	Norman Stanley
<b>Papers with report</b>	(i) Letter to the Department of Culture, Media and Sport dated 21 <sup>st</sup> of October 2009, in respect of the “Red and Yellow Card Scheme” (ii) Hillingdon's response was detailed in the report to the Licensing Committee in October 2009 (iii) Report on Actions taken by Metropolitan Police and Trading Standards regarding underage sales
<b>Ward(s) affected</b>	All

### SUMMARY

To update members of the Licensing Committee in respect of (i) The Red and Yellow Card scheme (ii) Mandatory licensing conditions relating to alcohol

### RECOMMENDATION

**The Licensing Committee note the report.**

### INFORMATION

- (a) At the Licensing Committee meeting on the 1<sup>st</sup> of October 2009 the committee discussed the Department of Culture Media and Sport's Red and Yellow Card Scheme. Norman Stanley the Licensing Service Manager was then instructed to respond to the DCMS in respect of the Licensing Committee's views on the scheme. A copy of the Licensing Service's Manager letter to the DCMS is annexed to this report. No further action required.
- (b) At the Licensing Committee meeting on the 2<sup>nd</sup> of July 2009 the committee discussed the Home Office consultation paper on the proposed new code of practice for alcohol retailers. The committee then instructed Ed Shaylor the Head of Community Safety to respond to the Home Office in respect of the Licensing Committee's views on the proposed Code of Practice in particular in respect of the proposed mandatory and discretionary conditions. A simplified copy of Ed Shaylor's letter to the Home Office is annexed to this report.
- (c) The Policing and Crime Act 2009 has now been enacted and clause 32 of the Act refers to “Mandatory Licensing Conditions Relating to Alcohol”. That particular clause refers to schedule 4, which empowers the Secretary of State to impose “Mandatory Conditions”
- (d) It is understood that the Home Office/DCMS will provide Local Authorities with details of the “Mandatory Licensing Conditions Relating to Alcohol” in the near future.
- (e) The Licensing Service will report to the Licensing Committee in respect of the Mandatory Licensing Conditions once they have been made known.

### FINANCIAL IMPLICATIONS

Licensing Committee  
Part I – Members, Public and Press

None at this time

**LEGAL IMPLICATIONS**

None at this time.

**BACKGROUND PAPERS**

The Policing and Crime Act 2009





# HILLINGDON

LONDON

Gerry Sutcliffe MP  
Department for Culture, Media and Sport  
2-4 Cockspur Street  
London  
SW1Y 5DH

Ref: NCS/LA03/DCMS09

21<sup>st</sup> October 2009

Dear Sir

## **THE LICENSING ACT 2003 – RED AND YELLOW CARD SCHEME**

With reference to your letter dated 2<sup>nd</sup> September 2009 concerning the adoption of the 'Red and Yellow' card scheme at Licensing Reviews, you are advised that I consulted with members of Hillingdon's full Licensing Committee on 1<sup>st</sup> October 2009 to seek their views on the matter.

At that meeting, the Licensing Authority considered very carefully all elements of the scheme and how the scheme would fit into the current review process.

Members expressed concerns that the scheme could be viewed as a 'light-touch' penalty and would therefore not be a deterrent that licence holders would take seriously.

Hillingdon's Licensing Authority have determined a number of reviews after illegal alcohol sales were made and, in most cases, the decision was to revoke the licence completely, or to impose the maximum suspension period.

Only one of the Licensing Committee's decisions has been challenged at Magistrates Court, however the Court upheld the Council's decision.

The review process has worked well in Hillingdon where we have seen the closure of a number of problem outlets. The Licensing Authority have expressed that this is the preferred method of dealing with review applications and they are minded to continue with each review based on the individual merits of each case.

Licensing Service  
Environment & Consumer Protection Services  
T.01895 277433 F.01895 250011  
licensing@hillington.gov.uk www.hillingdon.gov.uk  
London Borough of Hillingdon,  
3S/09, Civic Centre, High Street, Uxbridge, UB8 1UW



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Therefore, having given the proposed 'Red and Yellow' card system full consideration, Hillingdon's Licensing Committee have decided not to implement the scheme.

If I can be of further assistance on this matter, please contact me.

Yours faithfully

Norman Stanley  
Licensing Service Manager



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**Hillingdon's response was detailed in the report to the Licensing Committee in October 2009:**

**The Proposed Mandatory Conditions**

- (a) A ban on specified irresponsible alcohol promotions such as drinking games, speed drinking and all-inclusive offers.
- (b) A ban on alcohol being dispensed directly in the mouth of customers.
- (c) A requirement that specified minimum measures of alcohol are readily available in licensed premises.
- (d) A requirement that free tap water should be available for customers.
- (e) Online or mail order suppliers of alcohol must have a robust age verification system in place to prevent under age sales.
- (f) A requirement for units of alcohol information to be available at point of sale for a representative sample of drinks and health guidelines to be posted up in off-trade premises.

**Proposed Discretionary Local Conditions**

- (a) Bans the discounted sale of alcohol where the discount applies at particular times of the day or week (e.g. happy hours) at key times.
- (b) Bars "pub crawl" offers of discounted drinks at key times.
- (c) Requires a risk review to be carried out by the licence holder and a management plan agreed with the licensing authority.
- (d) Requires regular collection of empty or abandoned glasses during key times.
- (e) Bans the serving of alcohol in glass containers at key times.
- (f) Prevents customers leaving licensed premises with unsealed glass containers at key times.
- (g) Requires toilets to be checked regularly during key times.
- (h) Requires Security Industry Authority licensed door staff to be on duty.
- (i) Requirement for an incident record to be maintained.
- (j) Licensee must consult with police and local authority on dispersal policy.
- (k) CCTV must be in operation on the premises.
- (l) Requirement to display information on location of public transport links and phone numbers for local taxis.
- (m) Requirement for a direct telephone line to local licensed taxi companies.
- (n) Live text or radio pager link with police to be in place at premises.
- (o) "Challenge 21" scheme must be in operation.
- (p) Bulk discounts must not be offered during stipulated times.

**Hillingdon's response was as follows:**

**The cost of re-issuing licenses and dealing with appeals**

- 1 Hillingdon is concerned that the proposals add bureaucracy to a system on which the Licensing Act intended to reduce the bureaucratic burden. This will show itself in the cost of re-issuing every licence in the borough with the new conditions, in terms of

Licensing Committee time, licensing officer time and production costs of new licences. As we have 900 licensed premises, the cost could run to several thousand pounds.

### **The possible negative effect on businesses and local economy**

- 2 The majority of licensees are responsible people attempting to run a profitable business. We have no problem with the mandatory conditions as these are all eminently sensible, but we think the discretionary conditions should only be used in hotspot locations where there is a real problem with disorder associated with drinking. There is a danger that Licensing Committees will come under pressure from local councillors or residents to impose discretionary conditions in relatively low risk areas. We are also concerned that there may be pressure to use discretionary conditions arising from government targets – in other words a presumption that discretionary conditions will be used, and questions asked (or adverse publicity) from the centre if they are not.

### **The difficulty of imposing discretionary conditions**

- 3 Several discretionary conditions are not concise and are difficult to interpret into a licence condition which would stand up to legal scrutiny. For example, how to define “key times”. If discretionary conditions are wanted, we would have to review all the licensed premises in that location, incurring more cost. As premises cannot be exempted, all must comply, and the additional costs to businesses are substantial. We think that food led outlets such as restaurants should be able to be exempted from discretionary conditions imposed in an area – for example the use of plastic glasses or CCTV is not reasonable in a low risk restaurant

### **Additional discretionary condition**

- 4 An additional condition should be added that the personal licence holder must be on the premises between stipulated times when the venue is open.

We think it would be better to use existing licensing legislation and review processes to impose discretionary conditions on individual premises which are causing a problem. This would leave the new power to impose conditions on all establishments in an area to be used only in high risk areas where it is not possible to isolate which premises is the source of the problem.

<b>MEMBERS UPDATE ON SEX ESTABLISHMENTS</b>	
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<b>Committee</b>	<b>Licensing Committee</b>
<b>Officer Contact</b>	Stephanie Waterford 01895 277232
<b>Papers with report</b>	Memo to the Licensing Committee Regulation of lap-dancing premises consultation document Consultation response letter
<b>Ward(s) affected</b>	All

**RECOMMENDATION**

**That the Committee:**

note the recent Home Office consultation

note the update on the legislation.

decide whether or not to adopt the provisions to control sex establishments.

**SUMMARY**

For members to note the recent consultation on the regulation of lap dancing premises by the Home Office.

For members to receive an update on the current legislative changes to sex establishment licensing.

For members to decide whether or not the Council should adopt the provisions in order to control sex establishments.

**INFORMATION**

**Home Office Consultation – Regulation of Lap Dancing Clubs**

On 21<sup>st</sup> September 2009, a consultation document was launched by the Home Office to seek views on the proposed transitional arrangements for the regulation of lap dancing establishments.

The Licensing Service was made aware of the consultation on 3<sup>rd</sup> October 2009, which was after the last full licensing committee meeting.

With the consultation closing on 14<sup>th</sup> December 2009, there was insufficient time in which to present a full report to the next Licensing Committee scheduled for 19<sup>th</sup> January 2010,

It was decided that the best course of action would be to consult each member of the Licensing Committee via email and seek their views on the consultation.

A memo was sent to all members of the Licensing Committee on 15<sup>th</sup> October 2009 (Appendix A), which also included a copy of the Home Office consultation document (Appendix B).

A meeting was then convened on 25<sup>th</sup> November 2009 between Cllr Josephine Barrett (Chair of the Licensing Committee), Cllr Sandra Jenkins (Cabinet member for Environment), Kathy Sparks (Deputy Director, Environment & Consumer Protection), Norman Stanley (Licensing Service Manager) and Stephanie Waterford (Licensing Officer leading on Sex Establishments) to draft a response.

A response was drafted and submitted to the Home Office (Appendix C)

### **Update on Legislation**

The Policing and Crime Bill received Royal assent and became the Policing and Crime Act 2009 on 12<sup>th</sup> November 2009. There are provisions within the Act which amend the Local Government (Miscellaneous Provisions) Act 1982 to broaden the definition of 'sex establishment', however the provisions have to be adopted.

The Provisions introduce a new category of sex establishment - 'Sexual Entertainment Venue'.

Sexual entertainment venues have been introduced in order to control, by licensing, adult entertainment in lap-dancing/pole-dancing/striptease and similar establishments.

Although the Licensing Act 2003 offers some control of these premises with regard to opening hours and conditions relating to children and crime etc, it is unable to control the location or number of new premises.

Adoption of the provisions would mean that the Licensing Authority would be able to licence adult entertainment venues in the same way as sex shops under the Local Government (Miscellaneous Provisions) Act 1982. This would enable the Licensing Authority to consider applications having regard to the appropriateness of the locality of the proposed premises and the number of premises in any area.

Sex Establishment Licences would last for a one year period unless otherwise decided by the Authority. Conditions may be also be imposed which control hours of operation, displays, advertising and visibility of the interior of a premises.

Local Authorities will also need to develop a licensing policy for the regulation of sex establishments within the borough.

### **Adoption of the Provisions**

The Local Government (Miscellaneous Provisions) Act 1982 is an adoptive Act.

The Licensing Service are seeking the instructions from full Licensing Committee as to whether or not a recommendation should be submitted to Cabinet to adopt the provisions.

If Hillingdon were to decide not to adopt the provisions, a full consultation will need to be conducted within a year to seek the views of residents, stakeholders and interested parties as to whether or not there is a preference to adopt/not adopt the provisions.

## **FINANCIAL IMPLICATIONS**

None at present

**LEGAL IMPLICATIONS**

None

**BACKGROUND PAPERS**

Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982  
Part 2 of the Policing and Crime Bill

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# HILLINGDON

LONDON

## MEMO

<b>To</b>	Members of the Licensing Committee	<b>From</b>	Norman Stanley Licensing Service Manager
<b>Location</b>	3S/09	<b>Phone</b>	01895 27 (7418)
<b>Date</b>	15 <sup>th</sup> October 2009	<b>Subject</b>	Sex Encounter Establishments

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To all Members of the Licensing Committee,

### **CONSULTATION ON THE CHANGES TO THE REGULATION OF LAP-DANCING CLUBS**

You are advised that one of my Licensing Officers, Sharon Garner, attended the Institute of Licensing Legal and Technical Forum, on my behalf, on 1<sup>st</sup> October 2009. One of the agenda items was the Home Office consultation on the regulation of lap dancing clubs.

It was understood that the consultation document was sent out 'inter-alia' to all local authorities for comment. Consequently, I contacted Jan Adams, Executive Assistant to Hugh Dunnachie, as such consultations are normally sent to local authority Chief Executive departments. Jan Adams informed me that their office have no record of the document.

I have now managed to obtain the consultation document via the Home Office website (attached) and I note that the consultation is due to close on 14<sup>th</sup> December 2009.

As the next meeting of the full Licensing Committee is not until 19<sup>th</sup> January 2010, I have decided that the best way to deal with this particular consultation is as follows:

- a) Send a copy of the consultation to each member of the Licensing Committee to seek views in respect of the Home Office's proposals
- b) Request that members of the Licensing Committee forward their responses (if any) to me by Friday 13<sup>th</sup> November 2009.
- c) To convene a meeting with Cllr Josephine Barrett in her role as the Chair of the Licensing Committee to study the responses from members of the Licensing



- Committee before the end of November 2009 and to formulate a suitable response to the Home Office.
- d) Seek a meeting with Cllr Sandra Jenkins in her role as the member with the portfolio for the Environment in the first week in December 2009 to obtain her endorsement of the Licensing Committee's response to the Home Office.
  - e) On obtaining Cllr Jenkins' approval, I will respond direct to the Home Office before the official closing date, 14<sup>th</sup> December 2009.

I do hope that my proposed actions in respect of this consultation, meets with your approval.

The full consultation document is attached for your information and your attention is drawn particularly to paras. 14, 15 and 40.

Paragraph 14 gives a summary explanation of the new definition of relevant entertainment, '*...provided solely or principally for the purpose of sexually stimulating any member of the audience...*'

Paragraph 15 summarises the main changes to the Local Authorities (Miscellaneous Provisions) Act 1982 which include:

- Giving local people more say about the appropriateness of this type of venue;
- The requirement for the annual renewal of licences;
- Giving licensing authorities discretion to grant/refuse licences based on the character of the area;
- Allow licensing authorities powers to limit the number of venues within an area and
- Allows the licensing authority to impose a range of conditions.

Paragraph 40 highlights what the changes will mean for local people as it is proposed that local people will have the right to make representations to the local authority.

As I am on leave between 23<sup>rd</sup> October and 1<sup>st</sup> of November 2009, I have therefore nominated Stephanie Waterford to lead on this subject, so if you need further information or clarification on any matter, then please contact her direct.

Yours faithfully



Norman Stanley  
Licensing Service Manager



INVESTOR IN PEOPLE



# Regulation of Lap Dancing Clubs

Consultation on Transitional Arrangements

## **Content**

<b>Ministerial Forward</b>	<b>3</b>
<b>Consultation Summary</b>	<b>4</b>
<b>Introduction</b>	<b>6</b>
<b>Section One – Background</b>	<b>8</b>
Policy Background	8
The Policing and Crime Bill and the Local Government (Miscellaneous Provisions) Act 1982	9
<b>Section Two – Proposals for Regulations</b>	<b>10</b>
How will the 1982 Act apply to existing operators?	10
Transitional Period	11
New Operators	12
Outstanding Applications	13
Existing Conditions	13
What does this mean for local people?	13
Sex Encounter Establishments	14
Hostess Bars	14
Section 2 of the London Local Authorities Act 2004	15
Timescales - Next Steps	15
<b>Impact Assessment</b>	<b>15</b>
<b>Consultation</b>	<b>16</b>
Confidentiality & Disclaimer	16
Complaints	16
Government’s Code of Practice on Consultation	17

## Ministerial Forward



In September 2008, the previous Home Secretary announced her intention to bring forward important reforms to empower communities in England and Wales by giving them a greater say about the location and number of lap dancing clubs and similar establishments in their local areas.

To achieve this we have introduced measures in the Policing and Crime Bill to allow local authorities to regulate lap dancing clubs as sex establishments under Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982.

These important reforms will give local authorities the powers they have called for to allow them to respond more effectively to the views of local people, who have become increasingly concerned about the number of lap dancing clubs being established in their communities.

The measures are still being scrutinised by Parliament, but as we prepare for the Bill passing into law, we need to consider what form the transitional arrangements will take to ensure we move smoothly from the current regime to the new one. These arrangements will be important as they will help ensure that local authorities, businesses, and, of course, the communities who will be affected by the new reforms will have time to prepare and adjust. We recognise the impact on business but have always been clear that this needs to be balanced against ensuring local people have sufficient voice in their communities. We hope that the proposals set out in this consultation document strike this balance and will help those that need to take appropriate steps to adapt to the new licensing regime.

This, therefore, is an important consultation. It gives interested parties an opportunity to tell us how they will be affected by our proposals and, if necessary, allow us to take into account their concerns before bringing forward the transitional arrangements in secondary legislation.

We hope you will take the opportunity to give us your views.

**ALAN CAMPBELL**

A handwritten signature in cursive script that reads "Alan Campbell".

**MINISTER FOR CRIME REDUCTION**

# Consultation Summary

## Scope of the consultation

<b>Topic of this consultation:</b>	Proposals for transitional arrangements for the provisions in the Policing and Crime Bill relating to the regulation of lap dancing clubs and similar venues.
<b>Scope of this consultation:</b>	This consultation seeks views on proposals relating to transitional arrangements. This is not a consultation on the decision to reclassify lap dancing clubs as sex establishments.
<b>Geographical scope:</b>	England and Wales
<b>Impact assessment (IA):</b>	An updated impact assessment is included with this consultation.

## Basic Information

<b>To:</b>	<ul style="list-style-type: none"><li>• Local Authorities</li><li>• Existing operators</li><li>• New operators</li><li>• Licensing practitioners</li><li>• Local residents</li><li>• Campaign Groups</li><li>• Local Businesses</li><li>• Police</li></ul>
<b>Duration:</b>	21 <sup>th</sup> September to 14 <sup>th</sup> December
<b>Enquiries and Responses</b>	Thomas Cottam 4th Floor, Peel Building 2 Marsham Street London SW1P 4DF  <a href="mailto:SEVconsultation@homeoffice.gsi.gov.uk">SEVconsultation@homeoffice.gsi.gov.uk</a>
<b>Additional ways to become involved:</b>	As this consultation concerns a relatively small number of venues and deals with issues that are technical in nature, it will primarily be a written exercise.
<b>After the consultation:</b>	A summary of responses will be placed on the Home Office website.

## Background

<b>Getting to this stage:</b>	<p>In Summer 2008 the Department of Culture, Media and Sport (DCMS) held a consultation with local authorities regarding the regulation of lap dancing clubs. A majority of respondents felt that additional powers specific to lap dancing clubs were necessary.</p> <p>As part of the Policing and Crime Bill introduced in Parliament on the 19 December 2008, the Government included provisions to reclassify lap dancing clubs and similar establishment as sex establishments under Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982.</p>
<b>Previous engagement:</b>	<p>In addition to the DCMS consultation with local authorities, the Home Office sent a letter in September 2008 to selected stakeholders seeking views on the proposal to bring lap dancing clubs under the regulation of the 1982 Act. Over the last year Home Office officials also met with a number of interested groups and presented at events for licensing practitioners.</p>

## Introduction

1. This paper sets out the Government's proposals for the implementation of the amendments to Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 ('the 1982 Act') made by the Policing and Crime Bill<sup>1</sup>.
2. It explains the background to the policy and the proposed transitional arrangements that will be set out in secondary legislation, once the Bill has received Royal Assent.
3. The proposals set out in Section Two relate to the implementation of clause 26 of the Policing and Crime Bill which extends to England and Wales only.
4. In summary the Government is proposing that:
  - Any operator – new or existing - who wishes to provide 'relevant entertainment' at the end of the transitional period will be required to apply for a sex establishment licence in the manner set out in Schedule 3 to the 1982 Act.
  - Existing operators will be allowed to continue to provide 'relevant entertainment' under their existing permission without interruption for the duration of the transitional period or until their application for a sex establishment licence has been determined, whichever is the later.
  - The transitional period will start on the date Schedule 3 to the 1982 Act comes into force in that area (the 1<sup>st</sup> appointed date). It will last for 12 months.
  - For 6 months following the 1<sup>st</sup> appointed date, applicants will be able to submit applications all of which will be considered together by the local authority.
  - Applications received after the first 6 months (the 2<sup>nd</sup> appointed date) will be considered after applications received before the 2<sup>nd</sup> appointed date have been determined
  - Licences granted for sex encounter venues will not take effect until the conclusion of the transitional period (the 3<sup>rd</sup> appointed date)
  - Where a London local authority has previously adopted the sex encounter establishment category introduced by the London Local Authorities (General Powers) Act 1986, this category will be replaced by the new sex encounter venue category upon the adoption of the provisions introduced by the Policing and Crime Bill by the local authority.

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<sup>1</sup> <http://services.parliament.uk/bills/2008-09/policingandcrime.html>



5. We welcome your views on all the proposals and are particularly interested to hear your views on the specific questions asked throughout this consultation document. This is not a consultation on the Government's decision to reclassify lap dancing clubs and similar venues as sex establishments.
6. Please send your comments to:  
  
Thomas Cottam  
4<sup>th</sup> Floor, Peel Building  
2 Marsham Street  
London  
SW1P 4DF  
  
or  
  
[SEVconsultation@homeoffice.gsi.gov.uk](mailto:SEVconsultation@homeoffice.gsi.gov.uk)
7. You should also contact the consultation team should you require a copy of this consultation paper in any other format, e.g. Braille, Large Font, or Audio.
8. This document is available on the Home Office website.

## Section One – Background

9. This section outlines the background to the measures introduced by the Policing and Crime Bill and explains what the policy seeks to achieve.

### Policy Background

10. The increase in the number of lap dancing clubs in recent years has become an issue of concern for many local communities. Estimates suggest that the number of venues has doubled since 2004 and there are now close to 300 throughout the United Kingdom.<sup>2</sup> Other estimates put the figure closer to 150.<sup>3</sup> Most lap dancing clubs are regulated under the Licensing Act 2003 ('the 2003 Act'), under which they hold a premises licence/club premises certificate to provide 'regulated entertainment'. Under the 2003 Act, the objections of local people and businesses must be based on the four licensing objectives, namely: the prevention of crime and disorder; public safety; prevention of public nuisance and the protection of children from harm. As a result, licensing authorities cannot consider the objections of local people and businesses that are based on matters outside the scope of these four objectives, such as whether a lap dancing clubs is appropriate given the character of an area.
11. In June 2008 Gerry Sutcliffe, the Parliamentary Under Secretary of State at the Department of the Culture, Media and Sport, wrote to the chief executives of local authorities to clarify how they viewed the powers available to them under the 2003 Act and to seek their views on whether these, and other controls, were sufficient to address the concerns of local people and businesses. The majority of those who responded felt that additional legislation should be introduced to provide controls that are specific to lap dancing clubs and similar premises and suggested that Schedule 3 to the 1982 Act should be used for this purpose<sup>4</sup>. This approach was also supported by a wide range of stakeholders including the Local Government Association, the National Organisation of Residents Associations and the campaign groups Object and the Fawcett Society.
12. Alternative approaches that sought to make changes to the 2003 Act and utilise existing planning legislation were proposed by industry representatives who opposed the use of the 1982 Act. However, it was felt that such changes, especially those making use of planning legislation, would be overly complex and would not provide sufficient additional powers called for by many local authorities to regulate lap dancing clubs.

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<sup>2</sup> *A Growing Tide*, Object, April 2008:

<http://www.object.org.uk/files/A%20Growing%20Tide%20Report%202008.pdf>

<sup>3</sup> Figure provided by the Lap Dancing Association

<sup>4</sup> [http://www.culture.gov.uk/reference\\_library/foi\\_requests/5500.aspx](http://www.culture.gov.uk/reference_library/foi_requests/5500.aspx)

13. Therefore the Government announced on the 2 December 2008 that they would introduce legislation to reclassify lap dancing clubs and other similar venues as 'sex establishments' under the 1982 Act<sup>5</sup>. These provisions were included in the Policing and Crime Bill, which was introduced in Parliament on 19<sup>th</sup> December 2008.

## The Policing and Crime Bill and the Local Government (Miscellaneous Provisions) Act 1982

14. Clause 26 of the Policing and Crime Bill introduces a new category of sex establishment under Schedule 3 to the 1982 Act called a 'sex encounter venue'. This new category covers venues that provide 'relevant entertainment'. Relevant entertainment is defined as any live performance or display of nudity "*which is of such a nature that, ignoring financial gain, it must be reasonably assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience (whether by verbal or other means)*". Such venues will require a sex establishment licence. However, there is an exemption for premises which provide such entertainment infrequently (see new paragraph 2A(3)(b) to be inserted into Schedule 3 to the 1982 Act) and, even if premises do qualify as a sex encounter venue, the local authority still has the discretion to waive the requirement for a licence.

15. In summary Schedule 3 to the 1982 Act will, in particular:

- allow local people to oppose an application for a sex establishment licence if they have legitimate concerns that a lap dancing club would be inappropriate given the character of an area because for example, if the area was primarily a residential area.
- require licences to be renewed at least yearly, at which point local people will have the opportunity to raise objections with their local authority.
- allow a local authority to reject a licence application if they believe that to grant a licence for a lap dancing club would be inappropriate given the character of a particular area.
- allow a local authority to set a limit on the number of sex encounter venues that they think is appropriate for a particular area.
- allow a local authority to impose a wider range of conditions on the licences of lap dancing clubs than they are currently able to under the 2003 Act.

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<sup>5</sup> Announcement made in *Fair Rules for Strong Communities*, December 2008:  
<http://www.number10.gov.uk/wp-content/uploads/fair-rules-for-strong-communities.pdf>

## Section Two – Proposals for Regulations

16. To implement the measures introduced by Clause 26 of the Policing and Crime Bill there will need to be a transitional period to allow existing lap dancing clubs and other venues falling within the definition of a sex encounter venue time to comply with the new legislation. The transitional arrangements and the duration of the transitional period will be specified in secondary legislation made by the Secretary of State in England and Welsh Ministers in Wales.
17. This section sets out the proposals for these transitional arrangements and forms the main part of this consultation. We would welcome comments on this section and in particular your comments on those areas where specific questions have been raised.

### How will the 1982 Act apply to existing operators?

18. Representations have been made to the Government by industry representatives to exclude existing operators, who have explicit permission in their existing licences to provide 'relevant entertainment', from the new regime or at least to give them preferential treatment when their sex establishment licences fall to be determined for the first time. Such provisions, often referred to as 'grandfather rights', were made when the 2003 Act and the Gambling Act 2005 were introduced.
19. After careful consideration, it is proposed that similar provisions should not be made for the purposes of the Policing and Crime Bill and that existing lap dancing clubs who wish to continue to provide 'relevant entertainment' should be required to apply for a new sex establishment licence in the manner set out in Schedule 3 to the 1982 Act, subject to the transitional arrangements set out below.
20. Although the local authority will need to consider any rights an existing licence holder may have under Article 1, Protocol 1 of the European Convention on Human Rights when deciding an application, the Government is not proposing to give existing licence holders preferential treatment or indeed, exclude them from the provisions on the face of the Bill.
21. It is acknowledged that as a result of this approach, some existing businesses may have to stop providing 'relevant entertainment' or, in a small number of cases, close. While we understand the concerns that have been expressed by the industry, we believe that to automatically grant existing lap dancing clubs a sex establishment licence would be contrary to the intent behind these reforms, which is to give local people greater say over the number and location of lap dancing clubs in their area.

22. We are aware that in recent years there have been instances where lap dancing clubs have been granted licences despite significant local opposition. In many of these cases licensing authorities were unable to consider local opposition that fell outside the scope of the four licensing objectives.<sup>6</sup> In some cases, the result has been that lap dancing clubs have opened, and continue to operate, against the wishes of local people. For this reason, the Government believes that local communities should be given the opportunity to have their say over how or whether existing venues operate in the future.
23. We are mindful of the UK's obligations under EU law. Paragraphs 28 and 29 to Schedule 3 of the 1982 Act set out the provisions for dealing with existing sex shops and sex cinemas when these provisions were first commenced. Paragraph 29(4) provided that when considering several applications for sex establishment licences, local authorities would have to give preference to existing operators. A similar approach was considered with regards to sex encounter venues. However, it was concluded that such provisions would now be unlikely to survive a legal challenge in respect of Article 43 EC or the Services Directive.
- 24. What are your views on the proposal that the new regime should apply to existing operators and that the transitional provisions should not provide for them to be given preferential treatment when their application for a sex establishment licence comes to be determined?**

## Transitional Period

25. The transitional period is the time that existing operators will be given to comply with the new legislation.
26. The transitional period will commence on the date the provisions in the Policing and Crime Bill come into force in the particular local authority area ('the 1<sup>st</sup> appointed date'). The Secretary of State then intends to specify a date 6 months after the 1<sup>st</sup> appointed date which will be known as the '2<sup>nd</sup> appointed date'. The Government is proposing that between the 1<sup>st</sup> and 2<sup>nd</sup> appointed dates applicants, who can be either existing operators or new applicants, will be able to submit applications to be considered by the local authority. At the end of this period, local authorities will consider all applications received during this period and will not grant any application until they have done so.
27. This approach would ensure that where local authorities have decided to set a limit on the number of premises that they consider appropriate for a particular locality, all applications submitted during this period will be considered before the local authority decides which applicants should be been granted a licence. Applications received after the 2<sup>nd</sup> appointed date will be considered individually by local authorities.

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<sup>6</sup> *A Growing Tide*, Object, December 2008:  
<http://www.object.org.uk/files/A%20Growing%20Tide%20Update%20Dec%202008.pdf>

28. On the 3<sup>rd</sup> appointed date, which it is proposed will be 6 months after the 2<sup>nd</sup> appointed date all venues in that local authority area, unless awaiting the determination of an outstanding application, will have to be compliant with the new legislation.
29. The transitional period is the period between the 1<sup>st</sup> and 3<sup>rd</sup> appointed dates and is therefore currently intended to last for 12 months.
30. Under these proposals existing venues would be able to continue to provide 'relevant entertainment' under their existing premises licence or club certificate until the end of the transitional period, or until any application for a sex establishment licence submitted during the transitional period has been determined, whichever is the later. This will apply to all existing operators, irrespective of whether or not an application for sex establishment licence is submitted or whether or not such an application, if submitted, is granted.
- 31. What are your views on the proposed time periods between the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> appointed dates and do you believe that a transitional period of 12 months in total is appropriate?**
32. For the purposes of these transitional arrangements, it is proposed that an 'existing operator' is defined as a person operating any premises that on the 1<sup>st</sup> appointed day is authorised under an existing premises licence or club premises certificate, either explicitly or implicitly to provide entertainment that would be defined as 'relevant entertainment' under Clause 26 of the Policing and Crime Bill. Where licence holders are uncertain as to whether or not they are able to provide 'relevant entertainment' under their existing premises licence or club certificate they should contact the relevant local authority for guidance.
- 33. Do you agree with the proposed approach for identifying existing operators?**
34. Annex 1 shows how the transitional arrangements for existing operators would work under these proposals.

## New Operators

35. Where a premises without authorisation under an existing premises licence or club premises certificate, wishes to provide 'relevant entertainment' after the 1<sup>st</sup> appointed date, it is proposed that they will be required to apply for a sex establishment licence following the process set out in Schedule 3 to the 1982 Act, as amended by the Policing and Crime Bill. Under these proposals new operators will not be able to provide 'relevant entertainment' unless and until a sex establishment licence has been granted. Under these proposals new applications received before the 2<sup>nd</sup> appointed day would be considered at the same time as those applications from existing operators that are received by this date.

## Outstanding Applications

36. It is proposed that premises which have made an application before the 1<sup>st</sup> appointed date under the 2003 Act for a premises licence or club premises certificate authorising the provision of relevant entertainment is treated as a new operator for the purpose of these arrangements where the application remains outstanding after the 1<sup>st</sup> appointed date. They will therefore have to submit an application for a sex establishment licence under Schedule 3 to the 1982 Act.

## Existing Conditions

37. Where existing operators have sought explicit permission, when applying for a premises licence or club premises certificate under the 2003 Act to provide 'relevant entertainment' as defined in clause 26 of the Policing and Crime Bill, it is likely that they will be subject to licence conditions that apply directly to the provision of that entertainment. For example, where a lap dancing club has explicit permission to provide nude entertainment, they may have licence conditions that prohibit physical contact between performers and customers.
38. It is proposed that where such licence conditions are present on either an existing premises licence or clubs premises certificate, these conditions will be read as though they have been deleted from the premises licence or club premises certificate from the 3<sup>rd</sup> appointed day onwards. Where existing lap dancing clubs and similar venues are granted sex establishment licences for the provision of relevant entertainment, any conditions relating to the provision of that entertainment will be regulated by that licence alone.
- 39. What are your views on the proposal for dealing with conditions on existing premises licences/clubs premises certificates that relate specifically to the provision 'relevant entertainment'?**

## What does this mean for local people?

40. When an application is made to the local authority for a sex establishment licence, whether during the transitional period or after it, local people will have the opportunity to make representations to the local authority. It is important to note that these representations will be expected to address the provision of relevant entertainment and not activities that will continue to be authorised under the 2003 Act, such as the provision of alcohol and other forms of regulated entertainment.



## Sex Encounter Establishments

41. The 1982 Act contains a category of sex establishment called a 'sex encounter establishment', which was introduced by the Greater London Council (General Powers) Act 1986. This category only applies in London where the relevant local authority has adopted the provisions. It only covers those venues that offer sexually explicit entertainment (such as peep shows) but are not licensed under the 2003 Act.
42. The Government is proposing that the new category of sex encounter venue will replace the existing sex encounter establishment category upon a London Borough's adoption of the new provisions. If a London Borough, that has previously adopted Schedule 3 to the 1982 Act as amended by the Greater London Council (General Powers) Act 1986, decides not to adopt Schedule 3 to the 1982 Act as amended by the Policing and Crime Bill, the existing sex encounter establishment regime will remain in force.
43. Where a London Borough decides to adopt Schedule 3 of the 1982 Act as amended by the Policing and Crime Bill, secondary legislation will set out that where a sex encounter establishment licence has been previously granted it will be treated as though it were granted under the new sex encounter venue regime, retaining any conditions previously granted.
44. **What are your views on the proposals relating to the existing sex encounter establishment category? Also are you aware of any type of venue that currently requires a licence for a sex encounter establishment that would not require a licence for a sex encounter venue as defined in Clause 26 of the Policing and Crime Bill?**

## Hostess Bars

45. Schedule 3 of the 1982 Act also includes a category of sex establishment called 'hostess bar', which was introduced by the London Local Authorities Act 2007 and therefore does not apply outside of London. We do not intend to make any changes to the hostess bar provisions.

## Section 2 of the London Local Authorities Act 2004

46. Section 22 of the London Local Authorities Act 2004 (as amended by section 72 of the London Local Authorities Act 2007), applies only in London and appears to be of uncertain extent. On one interpretation it could be seen as prohibiting anyone from soliciting people to attend a sex establishment if the impression is given that the activities are, in fact, licensed under the 2003 Act. Another interpretation is that it creates that offence and an offence of soliciting people to attend a sex establishment.



**47. Do you believe that section 22 of the London Local Authorities Act 2004 should be amended in light of the amendments being made in the Policing and Crime Bill?**

## **Timescales – Next Steps**

48. The consultation closes on the 14<sup>th</sup> December 2009. Once responses have been reviewed a summary of the responses will be placed on the Home Office website. Subject to the Policing and Crime Bill receiving Royal Assent, the provisions on lap dancing are expected to be commenced in April 2010. However, the provisions will only take effect in any given area once the relevant local authority has passed a resolution to adopt them and appoints a day for the provisions to come in force in that area.

49. Prior to the commencement of the provisions, the Home Office will write to every local authority in England and Wales to ensure that they are aware of when the provisions come into force and what it will mean for them. The Home Office will also issue a press release and information will be made available in advance on the Home Office website ([www.homeoffice.gov.uk](http://www.homeoffice.gov.uk)) about the commencement date.

**50. What are your views on the proposal to commence these provisions in April 2010?**

## **Impact Assessment**

51. As part of this consultation we have revised the Impact Assessment (IA) that was published when the Policing and Crime Bill was introduced in Parliament on the 18 December 2008.

52. The revised IA attempts to estimate the potential cost to industry of these proposals. Due to the lack of information relating specifically to the sector this legislation will impact upon, the estimates in the IA should only be seen as indicative.

**53. Do you agree that the suggested costs and benefits set out in the Impact Assessment are a reasonable estimate of the potential costs and benefits? If not, can you provide evidence of what any likely costs and benefits should be?**

## Consultation

### Confidentiality & Disclaimer

54. The information you send us may be passed to colleagues within the Home Office, the Government or related agencies.
55. 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 [FOIA], the Data Protection Act 1998 [DPA] and the Environmental Information Regulations 2004).
56. If you want other information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.
57. 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.
58. 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.

### Complaints

59. 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.
60. The Co-ordinator can be emailed at:

[Nigel.Lawrence@homeoffice.gsi.gov.uk](mailto:Nigel.Lawrence@homeoffice.gsi.gov.uk) or alternatively write to him at:

Nigel Lawrence, Consultation Co-ordinator  
Home Office  
Performance and Delivery Unit  
3<sup>rd</sup> Floor Seacole  
2 Marsham Street  
London  
SW1P 4DF

## Government's Code of Practice on Consultation

*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>

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# HILLINGDON

LONDON

Thomas Cottam  
4th Floor, Peel Building  
2 Marsham Street  
London  
SW1P 4DF

Ref: SW/SE/09/Consultation

1<sup>st</sup> December 2009

Dear Sir,

## **REGULATION OF SEX ESTABLISHMENTS – CONSULTATION ON TRANSITIONAL ARRANGEMENTS**

With reference to the recent consultation which is to be returned to you by 14<sup>th</sup> December 2009, you are advised that I would have liked to discuss the document and its questions at the next meeting of our full Licensing Committee to seek their advice and guidance.

Unfortunately, the next scheduled meeting of the full licensing committee is not until 19<sup>th</sup> January 2010, therefore I decided that the most expedient way of dealing with this matter was to convene a meeting of the following persons to discuss the Home Office proposals:

- Cllr Josephine Barrett, Chair of the Licensing Committee
- Cllr Sandra Jenkins, Cabinet Member for the Environment
- Ms Kathy Sparks, Deputy Director of Environment & Consumer Protection
- Ms Stephanie Waterford, Lead Licensing Officer in respect of Sex Establishments

You are advised as follows in regard to the collective views on the consultation questions raised:

***24. What are your views on the proposal that the new regime should apply to existing operators and that the transitional provisions should not provide for them to be given preferential treatment when their application for a sex establishment licence comes to be determined?***

- It was felt that existing operators should be given some preferential treatment on their transitional applications, as the renewal process will allow for interested parties to make objections 12 months after the date of the original grant. This would be fairer and ease the burden already put upon existing operators.



**31. What are your views on the proposed time periods between the 1st, 2nd and 3rd appointed dates and do you believe that a transitional period of 12 months in total is appropriate?**

- A period of 12 months was felt to be too long given the number of applications that would be dealt with through transition. In comparison, the Licensing Act 2003 transitional period was a total of 9 months and the Gambling Act 2005 transitional period was 5 months. A period of 6 months for Sex Establishment licence transition was thought to be more appropriate

**33. Do you agree with the proposed approach for identifying existing operators?**

- Agree the proposals as set out in the consultation document.

**39. What are your views on the proposal for dealing with conditions on existing premises licences/clubs premises certificates that relate specifically to the provision 'relevant entertainment'?**

- Agree the proposals as set out in the consultation document.

**44. What are your views on the proposals relating to the existing sex encounter establishment category? Also are you aware of any type of venue that currently requires a licence for a sex encounter establishment that would not require a licence for a sex encounter venue as defined in Clause 26 of the Policing and Crime Bill?**

- Not applicable to the London Borough of Hillingdon as the GLC (General Powers) Act 1986 was not adopted in respect of sex establishments.

**47. Do you believe that section 22 of the London Local Authorities Act 2004 should be amended in light of the amendments being made in the Policing and Crime Bill?**

- Yes

**50. What are your views on the proposal to commence these provisions in April 2010?**

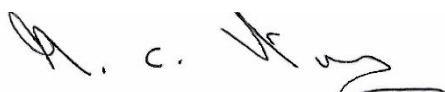
- Agree that the proposal is reasonable given that local authorities may set their own timescales for implementation.

**53. Do you agree that the suggested costs and benefits set out in the Impact Assessment are a reasonable estimate of the potential costs and benefits? If not, can you provide evidence of what any likely costs and benefits should be?**

- Yes

Please contact me should you wish to discuss any matter.

Yours faithfully



Norman Stanley  
Licensing Service Manager

## DCMS consultation on proposed amendments to the Licensing Act 2003 (Personal Licences – Relevant Offences)

**Committee**

Licensing Committee

**Officer Contact**

Stephanie Waterford

**Papers with report**

DCMS consultation on a proposal to amend the Licensing Act 2003 (Personal Licences – Relevant Offences)

**Ward(s) affected**

All

### RECOMMENDATION

**That the Licensing Committee advises the Licensing Service Manager of their views, in respect of the proposed amendments, in order for him to respond to the DCMS on their behalf.**

### SUMMARY

To seek the Committee's views in respect of the DCMS'S proposed amendments to the Licensing Act 2003

### INFORMATION

On 15<sup>th</sup> December 2009 the DCMS published a consultation on their web site in respect of a proposal to amend the Licensing Act 2003 to update the list of relevant offences that are treated as relevant offences for the purposes of obtaining and holding a personal licence under Part 6 of the Act. The closing date for the consultation is 15<sup>th</sup> March 2010.

The proposals are outlined below:

- To include the offence of failing to co-operate with a requirement to provide a preliminary test (in relation to impairment to drive under the influence of alcohol or drugs) under section 6 of the Road Traffic Act 1988.
- To include the offence of conspiracy to commit a crime as defined in the Criminal Law Act 1977.
- To include the offence of attempting to commit a crime as defined in the Criminal Attempts Act 1981.
- To include an unspent conviction for the offence of being drunk and disorderly in a public place under section 91 of the Criminal Justice Act 1967, if the person is convicted at court.
- To include an unspent conviction for the offence of possession of a controlled drug under the Misuse of Drugs Act 1971.

- To consult on whether there are any offences currently included in the list of relevant offences that should be removed.
- To consider whether persistent sales of tobacco to under 18s and offences under the Food Safety Act should be reflected as relevant offences.

## **FINANCIAL IMPLICATIONS**

None

## **LEGAL IMPLICATIONS**

None

## **BACKGROUND PAPERS**

- The Licensing Act 2003





department for  
**culture, media  
and sport**

## Proposal to amend Licensing Act 2003 (Personal Licence: relevant offences)

### Licensing Act 2003

15 December 2009

improving  
the quality  
of life for all

Our aim is to improve the quality of life for all through cultural and sporting activities, support the pursuit of excellence, and champion the tourism, creative and leisure industries.

# Contents

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<b>Chapter 1: GENERAL INFORMATION</b> .....	2
<b>Chapter 2: PERSONAL LICENCES AND CURRENT RELEVANT OFFENCES</b>	6
<b>Chapter 3: DETAILED PROPOSALS</b> .....	8
<b>Chapter 4: SUMMARY OF QUESTIONS</b> .....	17
<b>ANNEX A: SCHEDULE 4 OF THE ACT</b> .....	19
<b>ANNEX B: OFFENCES PROPOSED TO BE ADDED</b> .....	23
<b>ANNEX C: IMPACT ASSESSMENT</b> .....	32
<b>ANNEX D: GOVERNMENT CODE OF PRACTICE ON CONSULTATION</b> .....	48

# Chapter 1: GENERAL INFORMATION

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## Executive Summary

- 1.1 This Consultation Document seeks your views on a proposal to amend the Licensing Act 2003 (“the Act”) to update the list of offences that are treated as relevant offences for the purposes of obtaining and holding a personal licence under Part 6 of the Act.
- 1.2 The Act came into force on 24<sup>th</sup> November 2005, bringing eight licensing regimes into one. It was a significant change in the way a number of activities were licensed and covers the regulation of the sale and supply of alcohol, public entertainment, theatre, cinema, late night refreshment and late night cafés. In general, the new licensing system appears to be functioning smoothly and has delivered a number of positive outcomes. However, the Government continues to monitor the Act and to listen to the experiences of those it affects.
- 1.3 Our enforcement partners have brought to our attention that there are some offences not currently included in the list of ‘Personal licence: relevant offences’ (“relevant offences”) in Schedule 4 to the Act which they believe should be included. The relevant offences relate to the application for a grant or renewal, and the forfeiture or suspension, of a personal licence. Enforcement authorities believe that there are a number of offences (“new offences”) that should be added to the relevant offences to enable the new offences to be capable of being considered as part of the process for obtaining and holding a personal licence.
- 1.4 The list of relevant offences has already been subject to amendment on two occasions. One amendment was technical (effectively removing a presentational inconsistency) and one amendment was substantive, to revise the list of sexual offences which are relevant offences (in part to bring the Act into line with new criminal justice legislation).
- 1.5 We have met with enforcement authorities including the Association of Chief Police Officers (ACPO), Police Federation, Police Superintendents’ Association of England and Wales, Magistrates’ Association and Local Authorities Coordinators of Regulatory Services (LACORS) to discuss the proposed new offences which they believe are appropriate for inclusion in the Act. These discussions have informed the list of proposed new offences which form the basis of this consultation. The Government now wishes to consult more widely in order to gauge whether the new offences are considered to be appropriate and whether any of the existing relevant offences should be removed.

- 1.6** This consultation seeks your views on:
- a) whether any relevant offences should be removed (see paragraphs 3.20-23 and for all existing relevant offences see Annex A).
  - b) whether the proposed new offences should be added to the relevant offences (see paragraphs 3.6-19 and Annex B)
  - c) two further offences the government is minded to include on the list of relevant offences (see paragraphs 3.24-26)
  - d) two areas for future consideration (see paragraphs 3.27-28)

We have not explicitly included a 'no change' option, but if the responses that we receive favour leaving the relevant offences as they currently stand, this option will be considered.

- 1.7** Broadly, we are consulting on whether to include failure to cooperate with a preliminary test when driving and those offences of conspiracy or attempt which are capable of being committed in connection with the existing relevant offences. For example, theft is an existing relevant offence and we are proposing to add the offences of conspiracy and attempt to commit theft. We also considered adding other offences as new offences but took the view that these were either too wide in scope or that they were not congruent with the nature or gravity of the relevant offences.

- 1.8** We consider that the proposed additions are not contentious but rather strive to ensure a consistent approach to the relevant offences. We have received considerable support for these proposals and are now seeking the opinions of a wider spectrum of those who may be affected.

## **Scope of consultation**

- 1.9** The geographical scope of this consultation is England and Wales as it concerns the Licensing Act 2003, which applies to England and Wales.
- 1.10** This is a public consultation. We particularly seek views from those involved with the granting of personal licences such as licensing authorities, enforcement agencies, prospective and existing personal licence holders and those that work in or manage premises with a licence to sell or supply alcohol. However, we also welcome views from others and all responses will be carefully considered.
- 1.11** The consultation period will run for 12 weeks from 15 December 2009 to 12 March 2010.
- 1.12** Please respond before the closing date. There is a summary of the questions in chapter 4. Please send responses to [licensingconsultation@culture.gsi.gov.uk](mailto:licensingconsultation@culture.gsi.gov.uk). If you do not have access to e mail, please respond to:

Nigel Wakelin  
Licensing Team  
Sport and Leisure Directorate  
2-4 Cockspur Street  
London SW1Y 5DH

- 1.13** As this is a largely technical issue with specialist interests following detailed discussions with enforcement agencies and local authority representatives, this will be a purely written exercise. Please contact the Licensing Policy team if you require any other format e.g. Braille, Large Font or Audio.
- 1.14** For enquiries about the handling of this consultation please contact the DCMS Public Engagement and Recognition Unit (PERU) at the above address or email using the form at [www.culture.gov.uk/contact\\_us](http://www.culture.gov.uk/contact_us) heading your communication "Consultation on proposal to amend list of relevant offences in Licensing Act 2003".
- 1.15** Copies of responses will be published after the consultation closing date on the Department's website: [www.culture.gov.uk](http://www.culture.gov.uk)
- 1.16** Following consideration of the responses to the consultation, if it is decided to go ahead with amending the relevant offences, the Secretary of State may lay an Order before each House of Parliament. In accordance with section 197(3) of the Act, this Order will be subject to the negative resolution procedure.
- 1.17** Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 ("FOIA"), the Data Protection Act 1998 ("DPA") and the Environmental Information Regulations 2004.
- 1.18** If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. 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.
- 1.19** 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.

**1.20** The consultation is guided by the Government's Code of Practice on Consultation which is available at: <http://www.berr.gov.uk/whatwedo/bre/code/page46954.html>

# Chapter 2: PERSONAL LICENCES AND CURRENT RELEVANT OFFENCES

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## Granting Personal Licences

**2.1** A personal licence authorises an individual to sell alcohol or to authorise the sale of alcohol in accordance with a premises licence. Every premises which sells alcohol is required to (subject to limited exemptions) have a designated premises supervisor (DPS) who holds a valid personal licence, although the DPS is not required to be on the premises at all times. A premises may also have more than one personal licence holder but only one DPS. The requirement to have a DPS does not apply to a community premises which has applied for and obtained the alternative licence condition under sections 25A or 41D of the Act.

**2.2** A licensing authority must grant an application for a personal licence if:

- The applicant is aged 18 or over;
- The applicant possesses a licensing qualification accredited by the Secretary of State or is a person as prescribed by the Secretary of State by regulations;
- The applicant has not forfeited a personal licence held by them in the 5 years ending with the day the application was made;
- The applicant has paid the appropriate fee to the licensing authority; and
- The police have not given an objection notice about the grant of a personal licence following notification of any unspent relevant offence or foreign offence. (N.B. the licensing authority may still grant the application following such an objection notice if they do not consider it necessary to reject the application on crime prevention grounds.)

## Current Relevant Offences

**2.3** Relevant offence means an offence currently listed in Schedule 4 of the 2003 Act. A conviction that is spent for the purposes of the Rehabilitation of Offenders Act 1974 must be disregarded. If it appears that an applicant for the grant of a personal licence meets the requirements set out in paragraph 2.2 to be granted a personal licence detailed above, save that the applicant has a conviction for a relevant or foreign offence, the chief officer of police is given the opportunity to object to the application on the grounds that its grant would undermine the crime



prevention objective. If the chief officer of police does so object, the licensing authority must hold a hearing to determine the application. Similarly, if an applicant is applying to renew a personal licence and has a conviction for a relevant or foreign offence, the chief officer of police has the same opportunity to make objections and trigger a hearing by the licensing authority.

- 2.4** An unspent conviction does not necessarily preclude a person from being granted or renewing a personal licence, but their application will be scrutinised by the chief of police. In addition, where a court convicts a personal licence holder for a relevant offence, it has power under the Act to declare the licence suspended for a period of up to three months or to declare it forfeit.
- 2.5** The relevant offences can broadly be described as comprising either serious offences which are accepted as attracting societal disapproval (e.g. murder, serious assault, rape and other serious sex offences, drugs offences and theft), or relate directly to the types of activities in which those operating licensed premises will be, or have been, involved (e.g. consumer offences involving alcohol, unlawful broadcasting, unlawful gambling, unlicensed security provision, VAT evasion). For all existing relevant offences, see Annex A.

# Chapter 3: DETAILED PROPOSALS

---

- 3.1** This section will set out a list of the proposed new offences. It will explain the scope of each offence, why it is being considered and ask whether it should be included. You can find a summary of the questions in Chapter 4.
- 3.2** We believe that schedule 4 should be kept as concise as possible. For this reason we have subjected the offences that we have considered to the following three tests:
1. Is the offence relevant to carrying out the duties required of a personal licence holder?
  2. Is there evidence that there has been a problem of this offence not being included in schedule 4?
  3. Is the offence of a serious enough nature to sit comfortably with the existing offences in schedule 4?
- 3.3** In order to try and keep the list as concise as possible, we are also welcoming views and evidence of whether any existing relevant offences should be removed.
- 3.4** There are a number of additional offences that have been suggested by stakeholders and which the Government is minded to include, although it is not entirely clear how far they meet the requirements of the three tests, but may warrant inclusion as relevant offences. We would therefore like views on whether these offences should be included as relevant offences now, or at some point in the future when further evidence is available. There are also two further areas for consideration which we would welcome your views on.
- 3.5** For the proposed new offences, please see Annex B.

## **Failure to co-operate with a preliminary test**

- 3.6** The existing list of relevant offences includes three offences under the Road Traffic Act 1988. In essence, these relate to either causing death by careless driving or driving whilst under the influence of alcohol or drugs. However, a noticeable omission is the offence of failing to co-operate with a requirement to provide a preliminary test (whether in relation to alcohol, impairment or drugs). Under section 6 of the Road Traffic Act 1988, a constable may require a person to co-operate with a preliminary test if, for example, a constable reasonably suspects

that the person is driving or has been driving when they have alcohol or a drug in their body, are under the influence of alcohol or a drug, or are impaired. A person commits an offence if without reasonable excuse they fail to co-operate with a preliminary test. A preliminary test includes any of the tests described in sections 6A to 6C of the Road Traffic Act 1988, which include a preliminary breath test (section 6A), a preliminary impairment test (section 6B) and a preliminary drug test (section 6C). We propose that the offence of failing to co-operate with a preliminary test is added to the relevant offences.

- 3.7** We believe that the addition of this offence removes this anomaly and introduces consistency into the existing regime.

## Question

**1. Would you support the inclusion of the 'Failure to co-operate with a preliminary test' under section 6 of the Road Traffic Act 1988 in the relevant offences? Please explain your answer.**

## Conspiracy Offences

- 3.8** Many offences also have a related offence of conspiracy to commit that offence.
- 3.9** The crime of conspiracy is the agreement by two or more people to carry out a criminal act. The criminal act with which we are concerned is one or more of the relevant offences. Even if nothing is done beyond the agreement, the offence of conspiracy is complete. The agreement is key to the offence. This cannot be a mere mental operation; it must involve spoken or written words or other overt acts. If the defendant repents and withdraws immediately after the agreement has been concluded, they are still guilty of the offence. There must be an agreement to commit the criminal offence, but the motives of the conspirators are irrelevant.
- 3.10** Conspiracy arises in both statute and common law (common law is essentially the law developed by the courts). The Criminal Law Act 1977 creates and defines the offence of statutory conspiracy. It is not limited to agreements to commit a statutory crime (agreements to commit the common law offence of murder are charged under this offence). Under the common law, it is an offence to agree (a) to defraud, whether or not the fraud amounts to a crime, or (b) to do an act which tends to corrupt public morals or outrage public decency, whether or not the act amounts to a crime. The proposed new offences will not include this latter offence of conspiracy as it does not fall within the range of relevant offences. An agreement to commit a crime involving fraud or dishonesty is both a statutory conspiracy and a conspiracy to defraud.
- 3.11** The Government proposes that the related offences of conspiracy in respect of the existing relevant offences should be added to the list of relevant offences and

therefore capable of being considered by the police in relation to applications for personal licences.

- 3.12** For the list of proposed offences of conspiracy offences which would be added, please see Annex B. We would add that each and every existing relevant offence does not have a corresponding offence of conspiracy as it is not possible to conspire to commit certain existing relevant offences. For example, there is a relevant offence of false trade description of goods in circumstances where the goods in question are or include alcohol under section 1 of the Trade Descriptions Act 1968. It is not possible to conspire to commit this offence. It should be clear from Annex B which relevant offences do have a corresponding offence of conspiracy.

## **Question**

**2. Would you support the inclusion of conspiracy offences related to the offences included in the relevant offences? Please explain your answer.**

## **Attempt Offences**

- 3.13** As with offences of conspiracy considered above, many offences also have a related offence of attempting to commit an offence. A person is guilty of attempting to commit an offence under the Criminal Attempts Act 1981 if they do an act which is more than preparatory to the commission of the offence with the intention of committing an offence.
- 3.14** In each case it is a question of fact whether the accused has gone sufficiently far towards the full offence to have committed the act which is a key part of the attempt. If the accused has passed the preparatory stage, the offence of attempt has been committed and it is no defence that they then withdrew from committing the completed offence.
- 3.15** The Government proposes that the attempt offences in relation to the existing relevant offences should also be added to the list of relevant offences. We believe that the relevant offences are such that a conviction of attempting to commit any one of these offences should also be capable of being considered by the police in relation to applications for personal licences.
- 3.16** For the list of potential attempt offences that would be added, please see Annex B. We would add that each and every relevant offence does not have a corresponding offence of attempt as it is not possible to attempt to commit certain relevant offences. For example, there is a relevant offence of causing death by careless driving while under the influence of drink or drugs under section 3A of the Road Traffic Act 1988, but it is not possible to attempt to commit this offence. It should be clear from Annex B which relevant offences do have a corresponding offence of attempt.

## Question

**3. Would you support the inclusion of attempt offences arising under the Criminal Attempts Act 1981 in the relevant offences? Please explain your answer.**

**4. Do you think that any of the offences suggested in questions 1-3 above are not appropriate to be included in the relevant offences? Please explain your answer.**

### Relevant Offences from Acts that the 2003 Act replaced.

**3.17** There are a number of Acts that the 2003 Act wholly or partly repealed on 24 November 2005. However, as a person could have committed such an offence before the date of repeal and could therefore have held an unspent conviction for one or more of these offences, these were included in the existing list of relevant offences. These include the following Acts:

- London Government Act 1963
- Licensing Act 1964
- Private Places of Entertainment (Licensing) Act 1967
- Theatres Act 1968
- Late Night Refreshment Houses Act 1969
- Local Government (Miscellaneous Provisions) Act 1982
- Licensing (Occasional Permissions) Act 1983
- Cinemas Act 1985
- London Local Authorities Act 1990

**3.18** A person could also have been convicted of a conspiracy or attempt to commit one of these relevant offences. As a result, we have considered including them in the list of new offences. However, we do not believe that any of the relevant offences under these Acts attracted a prison sentence exceeding six months, which means that any such convictions are all capable of becoming 'spent'. Whilst the rehabilitation period would vary from case to case depending on the nature and/or extent of the sentence and it would be possible that there are some convictions for these relevant offences which remain unspent, we have not been given any examples of an unspent conviction for any of these offences. We have therefore decided not to include new offences of attempt and conspiracy related to the relevant offences that were repealed by the 2003 Act.

**3.19** We would welcome views on whether you think that this is an appropriate decision to have taken. We would also welcome any evidence of unspent convictions for the offences concerned.

## Questions

**5. Do you agree that conspiracy and attempt offences related to relevant offences from those Acts repealed by the 2003 Act should not be included in the list of new offences? If not, why not?**

**6. Do you have any evidence of unspent convictions for conspiracy and attempt offences related to relevant offences from those Acts repealed by the 2003 Act.**

## Removal of Offences

**3.20** We are also consulting on whether there are any offences currently included in the list of relevant offences that you feel should be removed. A list of the existing relevant offences is at Annex A.

**3.21** All relevant offences should be judged against the general benchmark 'Should the police be capable of considering whether a person who has been convicted of the offence in question be granted a personal licence or might that not be appropriate because, for example it could undermine the crime prevention objective?' In order to help establish this, we would also encourage you to consider them against the three tests identified in paragraph 3.2. These are:

1. Is the offence relevant to carrying out the duties required of a personal licence holder?
2. Is there evidence that there has been a problem of this offence not being included in schedule 4?
3. Is the offence of a serious enough nature to sit comfortably with the existing offences in schedule 4?

**3.22** There may also be relevant offences that you feel should not be included because the number of prosecutions for the particular offence is so low that their inclusion is not necessary.

**3.23** It is our opinion that the list of relevant offences should be as concise as possible. Whilst we need to make sure that it contains all necessary protection to the public, we also believe that in order to develop a good working understanding of the offences, it should not contain any superfluous or unnecessary offences. We feel that it is important that police time is not wasted in considering offences that are either irrelevant to the duties of a personal licence holder or are of a minor nature which does not impact on the personal licence holder's duties. We would also not wish to deter people from applying for a personal licence unnecessarily. For these reasons, we would be particularly interested in hearing the views of the enforcement agencies.

## Questions

**7. Are there any offences in the relevant offences that you feel should be removed from the list? If so, why?**

## Additional Offences

- 3.24** In addition to consulting on whether there are any offences in the relevant offences that you feel should be removed from the list, the Government is minded to include a further two offences, drunk and disorderly behaviour in a public place and possession of a controlled drug. Although we are mindful that the list of relevant offences should be as concise as possible, we feel there may be reason to include these offences even though it is not entirely clear at the present time that they pass the three tests.
- 3.25** A conviction for drunk and disorderly behaviour under section 91 of the Criminal Justice Act 1967 may indicate an irresponsible attitude towards alcohol. This offence will often be dealt with through the issue of a £80 penalty notice (which is not recorded as a conviction) which may suggest that it does not carry the same level of seriousness as existing relevant offences. However, it can be argued that, in more serious instances, there may be a prosecution and conviction which would then allow the police to consider the suitability of the offender to act as a personal licence holder. But it is also the case that a conviction may have resulted from an individual exercising their right to have the case heard in court (as opposed to accepting a penalty notice) rather than be an indication of the seriousness of the offence.
- 3.26** The existing relevant offences already recognise that licensed premises can be associated with drug dealing. Although the Government is proposing to add the offences of conspiracy and attempt to produce and/or supply a controlled drug to the list of relevant offences, it has been suggested that an unspent conviction for possession of a controlled drug under the Misuse of Drugs Act 1971, might also be a legitimate reason for the police to consider the suitability of a prospective personal licence holder, for example, if that individual is known to associate with drug dealers. As one of the three tests concerns the severity of the offence, the Government is particularly interested in views on whether possession of all classes of a controlled drug should be considered a relevant offence.

## Questions

**8. Should an unspent conviction for drunk and disorderly behaviour in a public place be included in the list of relevant offences? Please include the reasons for your view.**

**9. Should an unspent conviction for the possession of a controlled drug be included in the list of relevant offences and, if so, which classes of a controlled drug should be included. Please include the reasons for your view.**

### **Areas for further consideration**

- 3.27** The Government has recently introduced new arrangements to deal with persistent sales of tobacco to under 18s and is considering whether such sales should be considered as a relevant offence. As this is a relatively new measure, will look at this again in the near future once its use and impact becomes clearer.
- 3.28** There are also offences under the Food Safety Act that are being considered as a part of the Government's work on a code of practice for the retail of alcohol. These offences are not yet part of legislation. Should they become statutory offences, Government is minded to consider whether these offences meet the three tests laid out above and to consider whether they are therefore appropriate to be included as 'relevant offences' under Schedule 4 of the Act

### **Question**

**10. Do you have any views on whether persistent sales of tobacco to under 18s and offences under the Food Safety Act should be reflected in the relevant offences?**

### **Impact Assessment**

- 3.29** An Impact Assessment accompanies this consultation at Annex C. For a more detailed explanation of the costs and benefits, please see this. We believe that the amendments proposed will have a marginal cost to businesses.
- 3.30** We have not been able to calculate the number of people that the new amendments will affect. This is largely because, other than failure to cooperate with a preliminary breath test, it has not been possible to obtain the data for how many people are convicted of the new offences.
- 3.31** In the case of the offence of failing to cooperate with a preliminary test, we were able to obtain data for the number of people convicted for failing to cooperate with a preliminary breath test. We could then calculate how many of these people are likely to apply for a personal licence. We then used this to base an estimate of the number of people likely to apply for a personal licence with a conviction for failing to cooperate with a preliminary impairment test or a preliminary drugs test. This supported our belief that a very small number of people would be affected.



For details of our findings, please see the Impact Assessment that accompanies this consultation at Annex C.

- 3.32** In respect of the proposed addition of the related offences of conspiracy and attempt, it has not been possible obtain statistics for offences of conspiracy other than conspiracy to murder because this is the only offence of conspiracy for which separate statistics are available; the figures for the number of convictions of other offences of conspiracy is not separated out from the related substantive offence. Basing an estimate on the incidence of conspiracy to murder alone would not provide us with an accurate indication of the incidence of the new offences as a whole, as the numbers of convictions for these is likely to vary significantly from offence to offence. The Ministry of Justice, which is responsible for compiling these statistics, has also advised that trying to collate data about the number of convictions for the new offences would take a disproportionate amount of time and effort in view of the small numbers of people likely to be affected.
- 3.33** Furthermore, having this data would not make it possible to calculate accurately how many of these people are likely to apply for a personal licence. It should also be taken into account that having an unspent conviction for a relevant offence does not preclude a person from being granted a personal licence, but instead means that the police will consider the application in light of such a conviction.
- 3.34** We do however estimate that the number of people affected by these proposals will be very small. Between April 2006 and March 2008, an average of 388 applications for a personal licence were refused per annum, representing 0.7% of all personal licence applications. The Government does not estimate that this would be significantly increased by the proposed changes. The changes will only affect those who would like to apply for or renew a personal licence and who have an unspent conviction for one or more of the proposed new offences.
- 3.35** There will be an application cost for those people that apply for a personal licence and are refused as a result of a new offence, which we estimate to be £284 per application (for a full break-down of this cost, please see the Impact Assessment at Annex C). It is however possible that some people with an unspent conviction for the new offences may be deterred from applying for a personal licence.
- 3.36** There is also a potential loss of earnings cost for those that are prevented or deterred from obtaining a personal licence based on the assumption that a person could command higher wages as a personal licence holder. However, these proposals would not preclude them from working in licensed premises and would not affect them in other employment fields. We therefore feel that the effect of this will be very small.

## **Benefits**

- 3.37** The benefits of the proposal will be social rather than directly financial. The offences proposed are designed to enable greater scrutiny of people who have an unspent conviction of the offences proposed in order to help ensure that they uphold and promote the licensing objectives. This will allow the police to advise the licensing authority to refuse applications for a personal licence from persons

that they consider unfit to fulfill the duties and responsibilities of a personal licence holder. This will help to ensure that licensed premises are responsibly run.

- 3.38** There could also be indirect benefits as if a licensed premises is responsibly run, the likelihood that it will have problems which could lead to a licence review and possibly to conditions being added to its premises licence is reduced. This would avoid a potentially costly and burdensome process.

## **Questions**

**11. Do you agree with the assumptions that we have made in calculating the costs of the proposals? Do you have any evidence to support your opinion?**

**12. Do you agree that the suggested costs and benefits set out in the Impact Assessment are a reasonable estimate of the potential costs and benefits?**

**13. Are you able to provide us with data that will help us to calculate the costs and benefits of the proposals?**

# Chapter 4: SUMMARY OF QUESTIONS

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1. Would you support the inclusion of the 'Failure to co-operate with a preliminary test' under section 6 of the Road Traffic Act 1988 in the relevant offences? Please explain your answer.
2. Would you support the inclusion of conspiracy offences related to the offences included in the relevant offences? Please explain your answer.
3. Would you support the inclusion of attempt offences arising under the Criminal Attempts Act 1981 in the relevant offences? Please explain your answer.
4. Do you think that any of the offences suggested in questions 1-3 above are not appropriate to be included in the relevant offences? Please explain your answer.
5. Do you agree that conspiracy and attempt offences related to relevant offences from those Acts repealed by the 2003 Act should not be included in the list of new offences? If not, why not?
6. Do you have any evidence of unspent convictions for conspiracy and attempt offences related to relevant offences from those Acts repealed by the 2003 Act?
7. Are there any offences in the relevant offences that you feel should be removed from the list? If so, why?

**8. Should an unspent conviction for Drunk and Disorderly be included in the list of relevant offences? Please include the reasons for your view.**

**9. Should an unspent conviction for Possession of Controlled Drugs be included in the list of relevant offences and, if so, which classes of controlled substances should be included. Please include the reasons for your view.**

**10. Do you have any views on whether persistent sales of tobacco to under 18s and offences under the food safety act should be reflected in the relevant offences?**

**11. Do you agree with the assumptions that we have made in calculating the costs of the proposals? Do you have any evidence to support your opinion?**

**12. Do you agree that the suggested costs and benefits set out in the Impact Assessment are a reasonable estimate of the potential costs and benefits?**

**13. Are you able to provide us with data that will help us to calculate the costs and benefits of the proposals?**

# ANNEX A: SCHEDULE 4 OF THE ACT

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## SCHEDULE 4

Section 113

### PERSONAL LICENCE: RELEVANT OFFENCES

- 1** An offence under this Act.
- 2** An offence under any of the following enactments—
  - (a) Schedule 12 to the London Government Act 1963 (c 33) (public entertainment licensing);
  - (b) the Licensing Act 1964 (c 26);
  - (c) the Private Places of Entertainment (Licensing) Act 1967 (c 19);
  - (d) section 13 of the Theatres Act 1968 (c 54);
  - (e) the Late Night Refreshment Houses Act 1969 (c 53);
  - (f) section 6 of, or Schedule 1 to, the Local Government (Miscellaneous Provisions) Act 1982 (c 30);
  - (g) the Licensing (Occasional Permissions) Act 1983 (c 24);
  - (h) the Cinemas Act 1985 (c 13);
  - (i) the London Local Authorities Act 1990 (c vii).
- 3** An offence under the Firearms Act 1968 (c 27).
- 4** An offence under section 1 of the Trade Descriptions Act 1968 (c 29) (false trade description of goods) in circumstances where the goods in question are or include alcohol.
- 5** An offence under any of the following provisions of the Theft Act 1968 (c 60)—
  - (a) section 1 (theft);
  - (b) section 8 (robbery);
  - (c) section 9 (burglary);
  - (d) section 10 (aggravated burglary);

- (e) section 11 (removal of articles from places open to the public);
  - (f) section 12A (aggravated vehicle-taking), in circumstances where subsection (2)(b) of that section applies and the accident caused the death of any person;
  - (g) section 13 (abstracting of electricity);
  - (h) section 15 (obtaining property by deception);
  - (i) section 15A (obtaining a money transfer by deception);
  - (j) section 16 (obtaining pecuniary advantage by deception);
  - (k) section 17 (false accounting);
  - (l) section 19 (false statements by company directors etc);
  - (m) section 20 (suppression, etc of documents);
  - (n) section 21 (blackmail);
  - (o) section 22 (handling stolen goods);
  - (p) section 24A (dishonestly retaining a wrongful credit);
  - (q) section 25 (going equipped for stealing etc).
- 6** An offence under section 7(2) of the Gaming Act 1968 (c 65) (allowing child to take part in gaming on premises licensed for the sale of alcohol).
- 7** An offence under any of the following provisions of the Misuse of Drugs Act 1971 (c 38)—
- (a) section 4(2) (production of a controlled drug);
  - (b) section 4(3) (supply of a controlled drug);
  - (c) section 5(3) (possession of a controlled drug with intent to supply);
  - (d) section 8 (permitting activities to take place on premises).
- 8** An offence under either of the following provisions of the Theft Act 1978 (c 31)—
- (a) section 1 (obtaining services by deception);
  - (b) section 2 (evasion of liability by deception).
- 9** An offence under either of the following provisions of the Customs and Excise Management Act 1979 (c 2)—
- (a) section 170 (disregarding subsection (1)(a)) (fraudulent evasion of duty etc);
  - (b) section 170B (taking preparatory steps for evasion of duty).

- 10** An offence under either of the following provisions of the Tobacco Products Duty Act 1979 (c 7)—
  - (a) section 8G (possession and sale of unmarked tobacco);
  - (b) section 8H (use of premises for sale of unmarked tobacco).
- 11** An offence under the Forgery and Counterfeiting Act 1981 (c 45) (other than an offence under section 18 or 19 of that Act).
- 12** An offence under the Firearms (Amendment) Act 1988 (c 45).
- 13** An offence under any of the following provisions of the Copyright, Designs and Patents Act 1988 (c 48)—
  - (a) section 107(1)(d)(iii) (public exhibition in the course of a business of article infringing copyright);
  - (b) section 107(3) (infringement of copyright by public performance of work etc);
  - (c) section 198(2) (broadcast etc of recording of performance made without sufficient consent);
  - (d) section 297(1) (fraudulent reception of transmission);
  - (e) section 297A(1) (supply etc of unauthorised decoder).
- 14** An offence under any of the following provisions of the Road Traffic Act 1988 (c 52)—
  - (a) section 3A (causing death by careless driving while under the influence of drink or drugs);
  - (b) section 4 (driving etc a vehicle when under the influence of drink or drugs);
  - (c) section 5 (driving etc a vehicle with alcohol concentration above prescribed limit).
- 15** An offence under either of the following provisions of the Food Safety Act 1990 (c 16) in circumstances where the food in question is or includes alcohol—
  - (a) section 14 (selling food or drink not of the nature, substance or quality demanded);
  - (b) section 15 (falsely describing or presenting food or drink).
- 16** An offence under section 92(1) or (2) of the Trade Marks Act 1994 (c 26) (unauthorised use of trade mark, etc in relation to goods) in circumstances where the goods in question are or include alcohol.
- 17** An offence under the Firearms (Amendment) Act 1997 (c 5).
- 18** A sexual offence, being an offence—

- (a) listed in Part 2 of Schedule 15 to the Criminal Justice Act 2003, other than the offence mentioned in paragraph 95 (an offence under section 4 of the Sexual Offences Act 1967 (procuring others to commit homosexual acts));
  - (b) an offence under section 8 of the Sexual Offences Act 1956 (intercourse with a defective);
  - (c) an offence under section 18 of the Sexual Offences Act 1956 (fraudulent abduction of an heiress).
- 19** A violent offence, being any offence which leads, or is intended or likely to lead, to a person's death or to physical injury to a person, including an offence which is required to be charged as arson (whether or not it would otherwise fall within this definition).
- 20** An offence under section 3 of the Private Security Industry Act 2001 (c 12) (engaging in certain activities relating to security without a licence).
- 21** An offence under section 46 of the Gambling Act 2005 if the child or young person was invited, caused or permitted to gamble on premises in respect of which a premises licence under this Act had effect.
- 22** An offence under the Fraud Act 2006.
- 22** An offence under regulation 6 of the Business Protection from Misleading Marketing Regulations 2008 (offence of misleading advertising) in circumstances where the advertising in question relates to alcohol or to goods that include alcohol.
- 23** An offence under regulation 8, 9, 10, 11 or 12 of the Consumer Protection from Unfair Trading Regulations 2008 (offences relating to unfair commercial practices) in circumstances where the commercial practice in question is directly connected with the promotion, sale or supply of alcohol or of a product that includes alcohol.



# ANNEX B: OFFENCES PROPOSED TO BE ADDED

## Failure to co-operate with a preliminary test

Road Traffic Act 1988 – Section 6(6).

A person commits an offence if without reasonable excuse he fails to co-operate with one or more of the preliminary tests described in sections 6A to 6C of the Road traffic Act 1988 in the circumstances set out in section 6(2) to (5) of that Act.

These tests are:   A – Preliminary breath test  
                           B – Preliminary impairment test  
                           C – Preliminary drug test

## Attempt and conspiracy offences

The table below sets out potential new offences as a result of adding attempt and conspiracy to the list of relevant offences

Sch.4 s.	Offence	Attempt*	Conspiracy*
3	Firearms Act 1968	3 Business and other transactions with firearms and ammunition	*with text where explicit 3 Business and other transactions with firearms and ammunition
		5 Weapons subject to general prohibition	5 Weapons subject to general prohibition
		6 Power to prohibit movement of arms and ammunition	6 Power to prohibit movement of arms and ammunition
		17 Use of firearm to resist arrest (1) It is an offence for a person to make or attempt to make any use whatsoever of a firearm or imitation firearm with intent to resist or prevent the lawful arrest or detention of	

		himself or another person.	
		<b>21 Possession of firearms by persons previously convicted of crime (inc supply)</b>	
		<b>24 Supplying firearms to minors</b>	<b>24 Supplying firearms to minors</b>
		<b>25 Supplying firearm to person drunk or insane</b>	<b>25 Supplying firearm to person drunk or insane</b>
		<b>46 Power of search with warrant</b>	
5	Theft Act 1968	<b>1 Basic definition of theft</b>	<b>1 Basic definition of theft</b>
		<b>8 Robbery</b>	<b>8 Robbery</b>
		<b>9 Burglary</b>	<b>9 Burglary</b>
		<b>10 Aggravated burglary</b>	<b>10 Aggravated burglary</b>
		<b>11 Removal of articles from places open to the public</b>	<b>11 Removal of articles from places open to the public</b>
		<b>12A Aggravated vehicle-taking</b>	<b>12A Aggravated vehicle-taking</b>
		<b>13 Abstracting of electricity</b>	<b>13 Abstracting of electricity</b>
		<b>15 Obtaining property by deception</b>	<b>15 Obtaining property by deception</b>
		<b>15A Obtaining a money transfer by deception</b>	<b>15A Obtaining a money transfer by deception</b>
		<b>16 Obtaining pecuniary advantage by deception</b>	<b>16 Obtaining pecuniary advantage by deception</b>
		<b>20 Suppression, etc of documents</b>	<b>20 Suppression, etc of documents</b>
		<b>21 Blackmail</b>	<b>21 Blackmail</b>
		<b>22 Handling stolen goods</b>	
7	Misuse of Drugs Act 1971	<b>4(2) Production of a controlled drug</b>	<b>4(2) Production of a controlled drug</b>
		<b>4(3) Supply of a controlled drug</b>	<b>4(3) Supply of a controlled drug</b>

8	Theft Act 1978		1 Obtaining services by deception 2 Evasion of liability by deception	1 Obtaining services by deception 2 Evasion of liability by deception
9	Customs and Excise Management Act 1979	170 Fraudulent evasion of duty		
10	Tobacco Products Duty Act 1979	8G Possession and sale of unmarked tobacco		8G Possession and sale of unmarked tobacco
11	Forgery and Counterfeiting Act 1981			1 The offence of forgery 2 The offence of copying a false instrument 3 The offence of using a false instrument 4 The offence of using a copy of a false instrument
		3 The offence of using a false instrument 4 The offence of using a copy of a false instrument		
		15 Offences of passing etc. counterfeit notes and coins		14 Offences of counterfeiting notes and coins 15 Offences of passing etc. counterfeit notes and coins
		17 Offences involving the making or custody or control of counterfeiting materials and implements		17 Offences involving the making or custody or control of counterfeiting materials and implements
		20 Prohibition of importation of counterfeit notes and coins		20 Prohibition of importation of counterfeit notes and coins
		21 Prohibition of exportation of counterfeit notes and coins		21 Prohibition of exportation of counterfeit notes and coins
12	Firearms (Amendment) Act 1988	5 Restriction on sale of ammunition for smooth-bore guns 6 Shortening of barrels 15 Rifle and pistol clubs	5 Restriction on sale of ammunition for smooth-bore guns	5 Restriction on sale of ammunition for smooth-bore guns
		Sch 4 Offences and enforcement (1) (museum causing person to fail to comply with condition for licence)		

13	Copyright, Designs and Patents Act 1988				107(1)(d)(iii) Public exhibition in the course of a business of article infringing copyright  107(1)(d)(iii) Public exhibition in the course of a business of article infringing copyright  198(2) Broadcast etc of recording of performance made without sufficient consent  297(1) Fraudulent reception of transmission  297A(1) Supply etc of unauthorised decoder
15	Food Safety Act 1990		297(1) Fraudulent reception of transmission  14 Selling food or drink not of the nature, substance or quality demanded		14 Selling food or drink not of the nature, substance or quality demanded
16	Trade Marks Act 1994		92(1) Unauthorised use of trade mark, etc in relation to goods (in circumstances where the goods in question are or include alcohol)		92(1) Unauthorised use of trade mark, etc in relation to goods (in circumstances where the goods in question are or include alcohol)
18	Criminal Justice Act 2003 (Sexual Offences Act 1956)		66 An offence under section 1 of the Sexual Offences Act 1956 (rape)  67 An offence under section 2 of that Act (procurement of woman by threats)  68 An offence under section 3 of that Act (procurement of woman by false pretences)  69 An offence under section 4 of that Act (administering drugs to obtain or facilitate intercourse)		66 An offence under section 1 of the Sexual Offences Act 1956 (rape)  67 An offence under section 2 of that Act (procurement of woman by threats)  68 An offence under section 3 of that Act (procurement of woman by false pretences)  69 An offence under section 4 of that Act (administering drugs to obtain or facilitate intercourse)
			70 An offence under section 5 of that Act (intercourse with girl under thirteen)		
			71 An offence under section 6 of that Act (intercourse with girl under 16)		
			72 An offence under section 7 of that Act (intercourse with a defective)		



	Criminal Justice Act 2003 (Theft Act 1968)	97 An offence under section 9 of the Theft Act 1968 of burglary with intent to commit rape	
	Criminal Justice Act 2003 (Criminal Law Act 1977)	98 An offence under section 54 of the Criminal Law Act 1977 (inciting girl under sixteen to have incestuous sexual intercourse)	
	Criminal Justice Act 2003 (Protection of Children Act 1978)	99 An offence under section 1 of the Protection of Children Act 1978 (indecent photographs of children)	
	Criminal Justice Act 2003 (Sexual Offences Act 2003)	102 An offence under section 1 of the Sexual Offences Act 2003 (rape)	
		103 An offence under section 2 of that Act (assault by penetration)	
		106 An offence under section 5 of that Act (rape of a child under 13)	
		107 An offence under section 6 of that Act (assault of a child under 13 by penetration)	
		109 An offence under section 8 of that Act (causing or inciting a child under 13 to engage in sexual activity)	
		110 An offence under section 9 of that Act (sexual activity with a child)	
		111 An offence under section 10 of that Act (causing or inciting a child to engage in sexual activity)	
			112 An offence under section 11 of that Act (engaging in sexual activity in the presence of a child)
		113 An offence under section 12 of that Act (causing a child to watch a sexual act)	
		114 An offence under section 13 of that Act (child sex offences committed by children or young persons)	114 An offence under section 13 of that Act (child sex offences committed by children or young persons)
		116 An offence under section 15 of that Act (meeting a child following sexual grooming etc.)	
		117 An offence under section 16 of that Act (abuse of	117 An offence under section 16 of that Act (abuse of

		position of trust: sexual activity with a child)	position of trust: sexual activity with a child)
		120 An offence under section 19 of that Act (abuse of position of trust: causing a child to watch a sexual act)	
		121 An offence under section 25 of that Act (sexual activity with a child family member)	
		123 An offence under section 30 of that Act (sexual activity with a person with a mental disorder impeding choice)	
			125 An offence under section 32 of that Act (engaging in sexual activity in the presence of a person with a mental disorder impeding choice)
		126 An offence under section 33 of that Act (causing a person with a mental disorder impeding choice to watch a sexual act)	126 An offence under section 33 of that Act (causing a person with a mental disorder impeding choice to watch a sexual act)
		128 An offence under section 35 of that Act (causing a person with a mental disorder to engage in or agree to engage in sexual activity by inducement, threat or deception)	
		130 An offence under section 37 of that Act (causing a person with a mental disorder to watch a sexual act by inducement, threat or deception)	130 An offence under section 37 of that Act (causing a person with a mental disorder to watch a sexual act by inducement, threat or deception)
		131 An offence under section 38 of that Act (care workers: sexual activity with a person with a mental disorder)	
		132 An offence under section 39 of that Act (care workers: causing or inciting sexual activity)	
		134 An offence under section 41 of that Act (care workers: causing a person with a mental disorder to watch a sexual act)	
			135 An offence under section 47 of that Act (paying for sexual services of a child)

				137 An offence under section 49 of that Act (controlling a child prostitute or a child involved in pornography)
		139 An offence under section 52 of that Act (causing or inciting prostitution for gain)		
		141 An offence under section 57 of that Act (trafficking into the UK for sexual exploitation)	141 An offence under section 57 of that Act (trafficking into the UK for sexual exploitation)	
		142 An offence under section 58 of that Act (trafficking within the UK for sexual exploitation)	142 An offence under section 58 of that Act (trafficking within the UK for sexual exploitation)	
		143 An offence under section 59 of that Act (trafficking out of the UK for sexual exploitation)	143 An offence under section 59 of that Act (trafficking out of the UK for sexual exploitation)	
		144 An offence under section 61 of that Act (administering a substance with intent)	144 An offence under section 61 of that Act (administering a substance with intent)	
		145 An offence under section 62 of that Act (committing an offence with intent to commit a sexual offence)	145 An offence under section 62 of that Act (committing an offence with intent to commit a sexual offence)	
		147 An offence under section 64 of that Act (sex with an adult relative: penetration)		
		151 An offence under section 69 of that Act (intercourse with an animal)		
		152 An offence under section 70 of that Act (sexual penetration of a corpse)		
		153 An offence of— (a) aiding, abetting, counselling, procuring or inciting the commission of an offence specified in this Part of this Schedule, (b) conspiring to commit an offence so specified, or (c) attempting to commit an offence so specified.	153 An offence of— (a) aiding, abetting, counselling, procuring or inciting the commission of an offence specified in this Part of this Schedule, (b) conspiring to commit an offence so specified, or (c) attempting to commit an offence so specified.	
19	Violent offences	The attempt to commit any offence leading, intended to lead or likely to lead to a person's death or to physical injury to a person, including arson (whether or not it would otherwise	The attempt to commit any offence leading, intended to lead or likely to lead to a person's death or to physical injury to a person, including arson (whether or not it would otherwise	



		fall within this definition)	fall within this definition)	
20	Private Security Industry Act 2001	None	3 Engaging in certain activities relating to security without a licence	
22	Fraud Act 2006		2 Fraud by false representation	
			3 Fraud by failing to disclose information	
			11 Obtaining services dishonestly	
22	Business Protection from Misleading Marketing Regulations 2008		6 Misleading advertising (where the advertising in question relates to alcohol or goods including alcohol)	
23	Consumer Protection from Unfair Trading Regulations 2008		8 Commercial practice contravening professional due diligence distorting the economic behaviour of the consumer	
			11 Aggressive commercial practice	

# ANNEX C: IMPACT ASSESSMENT

Summary: Intervention & Options		
<b>Department /Agency:</b> <b>■ Department of Culture, Media and Sport</b>	<b>Title:</b> <b>■ Impact Assessment for proposals to amend the list of relevant offences in schedule 4 of the Licensing Act 2003.</b>	
<b>Stage:</b> Consultation	<b>Version:</b> 1.3	<b>Date:</b> 07/10/2009
<b>Related Publications:</b>		

Available to view or download at:

<http://www.>

**Contact for enquiries:** Anna Woodham

**Telephone:** 0207 211 6435

## What is the problem under consideration? Why is government intervention necessary?

The Government would like to consult on amending the list of 'Personal licence: relevant offences' in Schedule 4 to the Licensing Act 2003 ("the 2003 Act"), which result in an individual's application for a personal licence being considered against the crime prevention objective by the police. The current sections of the Act relating to relevant offences are working well but following representations from enforcement stakeholders, it was brought to our attention that there are several offences not currently included that there is good reason to include. We are consulting on whether certain offences should be added to the list and whether any should be taken away.

## What are the policy objectives and the intended effects?

Having examined requests from key enforcement partners, the Government believes that there are some offences that should be included in the list of relevant offences in the Act but which aren't currently included. The Government agrees that an application for a personal licence submitted by a person with an unspent conviction for one or more of the proposed offences should be more carefully scrutinised than that of other applicants. There may also be some offences included in the list that are either little used, considered outdated, or not directly relevant to a person's suitability to hold a personal licence.

## What policy options have been considered? Please justify any preferred option.

The Government has explored which offences to include with relevant stakeholders. We have only included those that satisfy tests identified below in order to establish if offences are appropriate to be included in schedule 4. Broadly speaking, the tests are that the offence is relevant to carrying out the duties of a personal licence holder; that there is evidence that supports including the offence; and that they are of a similar nature and gravity as the existing relevant offences. For the most part, we have added the corresponding offences for 'conspiracy' and 'attempt' (where appropriate) to the offences currently in the list. We are also proposing that the offences for failing to cooperate with a preliminary test under section 6(6) of the Road Traffic Act 1988 be included as this is a notable omission. See Annex B for a full list of proposed offences.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

We will review the actual costs and benefits of the proposals three calendar years after implementation (subject to Parliament) if necessary and appropriate.

**Ministerial Sign-off** For Consultation Stage Impact Assessments:

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible Minister:

..... Date:

## Summary: Analysis & Evidence

**Policy Option: Relevant Offences**

**Description: Proposed amendments to schedule 4 of the Licensing Act 2003.**

<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups' The proposals will only affect a small number of individuals, so the cost to businesses will be marginal. It has not been possible to obtain data of how many people have unspent convictions for each offence and this would not provide us with a reliable basis as it is difficult to predict accurately how many of these people may apply for a personal licence in the future.
	<b>One-off</b> (Transition)	<b>Yrs</b>	
	<b>£ Marginal</b>		
	<b>Average Annual Cost</b> (excluding one-off)		
	<b>£ Marginal</b>	<b>Total Cost (PV)</b>	<b>£ Marginal</b>
Other <b>key non-monetised costs</b> by 'main affected groups': N/A			

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups' Other <b>key non-monetised benefits</b> by 'main affected groups': Largely social. Greater scrutiny for personal licence applicants convicted of the proposed offences helping to ensure that personal licence holders uphold / promote the licensing objectives.
	<b>One-off</b>	<b>Yrs</b>	
	<b>£ Marginal</b>		
	<b>Average Annual Benefit</b> (excluding one-off)		
	<b>£ Marginal</b>	<b>Total Benefit (PV)</b>	<b>£ Marginal</b>

### Key Assumptions/Sensitivities/Risks

- That the number of people affected will be very small
- That there will be applications for a personal licence made by people with unspent convictions of the proposed offences in the future.

Price Base Year	Time Period Years 10	<b>Net Benefit Range</b> (NPV) £	<b>NET BENEFIT</b> (NPV Best estimate) £
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What is the geographic coverage of the policy/option?		England and Wales		
On what date will the policy be implemented?		Subject to Parliament		
Which organisation(s) will enforce the policy?		Licensing Authorities		
What is the total annual cost of enforcement for these organisations?		Marginal		
Does enforcement comply with Hampton principles?		Yes		
Will implementation go beyond minimum EU requirements?		N/A		
What is the value of the proposed offsetting measure per year?		£ n/a		
What is the value of changes in greenhouse gas emissions?		£ n/a		
Will the proposal have a significant impact on competition?		No		
Annual cost (£-£) per organisation (excluding one-off)	Micro Marginal	Small Marginal	Medium Marginal	Large Marginal
Are any of these organisations exempt?	No	No	N/A	N/A

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)				(Increase - Decrease)
Increase of	£ Marginal	Decrease of	£ Marginal	<b>Net Impact</b> £ Marginal

Key: Annual costs and benefits: Constant Prices (Net) Present Value

## Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

### The Issue

1. The 2003 Act provides that individuals who may be engaged in making and authorising the sale of alcohol require a personal licence. This is because such a person has a large responsibility and a potential impact on crime and anti-social behaviour. Not every person retailing alcohol at a premises licensed for that purpose needs to hold a personal licence, but every sale or supply of alcohol must at least be authorised by such a holder. Each premises with a licence to sell alcohol must have at least one personal licence holder, but may have several.
2. The responsibility of a personal licence holder means that the application process has several requirements such as that they must possess an accredited licensing qualification and they must be over 18. They are also required to provide a criminal records check with details of any unspent convictions they have. If an applicant does have an unspent conviction for a relevant or foreign offence, then the application is examined by the police who decide whether the applicant is suitable to hold the responsibilities of a personal licence holder. An unspent conviction does not necessarily preclude a person from being granted a personal licence, but does require that they are more thoroughly scrutinised.
3. The relevant offences in Schedule 4 to the Act are included because it is felt that they are offences that are either of a serious enough nature, or in some way related to the responsibilities of a personal licence holder to mean that their application to hold a personal licence should be more thoroughly considered. See Annex A for a full list of the existing relevant offences.
4. Key enforcement partners have alerted Government to the fact that there are some offences not currently included in the list of relevant offences but which they feel should be included. The Government has discussed the suggestions and considered the implications and would like to consult on whether certain offences should be included.
5. The Government is also concerned that there may be some offences currently included which are not appropriate for inclusion in this list. This may be because they are extremely little used, outdated, or not relevant to a person's suitability to hold a personal licence. We are also consulting on whether any offences should be removed.

### Objectives and Intended Effects

6. The inclusion of additional offences is intended to tighten up the list of offences in order to make the 2003 Act more robust. The inclusion of some additional offences should achieve this. The intended effect is that the system for applying for a personal licence has an adequate level of scrutiny and ensures that personal licence holders uphold and promote the licensing objectives.
7. On the other hand, the list of relevant offences should not contain any unnecessary or disproportionate offences as this would be against the principles of better regulation. Whilst we need to make sure that it contains all necessary protection to the public, we also believe that in order to develop a good working understanding of the offences, it should not contain any superfluous or unnecessary offences. It is important that police

time is not wasted in considering offences that are not relevant to the duties of a personal licence holder. We would also not wish to deter people from applying for a personal licence unnecessarily.

8. In order to strike this balance, we have drawn up three tests to judge each proposed new offence against. These are:
  1. Is the offence relevant to carrying out the duties required of a personal licence holder?
  2. Is there evidence that there has been a problem of this offence not being included in schedule 4?
  3. Is the offence of a serious enough nature to sit comfortably with the existing offences in schedule 4?

### The Government's Proposals

9. We are consulting whether the following offences should be added to the list of Relevant Offences:
  - Failure to cooperate with a preliminary test (section 6(6) of Road Traffic Act 1988)
  - Conspiracy offences relating to offences listed in Schedule 4
  - Attempt offences relating to offences listed in Schedule 4.
10. The Government has considered the proposed offences carefully and believes they satisfy these tests and is therefore in favour of including them as Relevant Offences for the purposes of obtaining a personal licence under the 2003 Act.
11. Any offences that are added to the list of relevant offences will apply to new applications and to applications for the renewal of a personal licence. It will not affect those who already hold a valid personal licence.
12. We would also like to consult on whether there are any offences in the current list that should be removed and two areas for further consideration, persistent sales of tobacco to under 18s and offences under the Food Safety Act.
13. The Government is also minded to include the offences drunk and disorderly behavior under section 91 of the Criminal Justice Act 1967 and an unspent conviction for possession of a controlled drug under the Misuse of Drugs Act 1971.
14. We have not explicitly included a 'no change' option, but if the responses that we receive favour leaving the relevant offences as they currently stand, this option will be considered.

### Costs and Benefits

15. It has been extremely difficult to gather reliable data on which to base an accurate estimate of the costs and benefits of the proposals.
16. This is largely because we have not been able to calculate accurately the number of people that the new amendments will affect as, other than failure to cooperate with a preliminary breath test, it has not been possible to obtain the data for how many people

are convicted of the new offences per annum. A more detailed explanation as to why this has not been possible can be found in the relevant sections below.

## Benefits

17. The benefits of the proposal will be social rather than directly financial. The offences proposed are designed to enable greater scrutiny of people who have an unspent conviction of the offences proposed in order to help ensure that they uphold and promote the licensing objectives. This will allow the police to object to the application for a personal licence on the grounds of crime prevention i.e. that they consider the person unfit to fulfill the duties and responsibilities of a personal licence holder. This will help to ensure that licensed premises are responsibly run.
18. There could also be indirect financial benefits as if a licensed premises is responsibly run, the likelihood that it will have problems which could lead to a licence review and possibly to conditions being added to its premises licence is reduced. This would avoid a potentially costly process.

## Costs

### Failure to Cooperate with a Preliminary Test

19. In the case of the offence of failing to cooperate with a preliminary test, we have been able to obtain data for the number of people convicted of failing to cooperate with a preliminary breath test between 2003 and 2007 from the Ministry of Justice's Office for Criminal Justice Reform Evidence and Analysis Unit. These figures show that 4,696 people were convicted of this offence over five years, an average of 939 per annum.
20. We can also calculate how many of these are likely to apply for a personal licence. Between April 2006 and March 2008, an average of 0.14% of the working population applied for a personal licence. Assuming that the same proportion of people that failed to cooperate with a breath test apply for a personal licence, 1.3  $[(0.14 \times 939) / 100]$  members of this group would apply for a personal licence and could be refused as a result of their conviction.
21. This represents a worst case scenario as a result of the following assumptions that we have made in reaching this figure are taken into account:
  - a. That this group is not deterred from applying for a personal licence as a result of a conviction for this new relevant offence.
    - That all of those that have an unspent conviction for this offence and apply for a personal licence have their application refused (this is not necessarily the case as an unspent conviction for a relevant offence does not preclude a person from being granted a personal licence, but rather means the police will consider the application in light of such a conviction).
22. This only represents failure to cooperate with a breath test, whereas section 6(6) of the Road Traffic Act also contains the offences of failure to cooperate with a preliminary impairment test and failure to cooperate with a preliminary drugs test. Although we have been unable to obtain data for these additional offences, we are told anecdotally that numbers of convictions for failing to cooperate with a preliminary impairment test or a preliminary drug test would be significantly smaller. However, in order to represent a worst case scenario, we have assumed that the same number of people are convicted

for both of these offences individually as for failing to cooperate with a preliminary breath test. This means that our estimated total of people per annum who would apply for a personal licence and might be affected by our proposals as a result of their conviction for this offence is 3.5 people

23. This is a very small number and in light of the assumptions that we have outlined above, the actual number is likely to be even smaller.

### Conspiracy and Attempt Offences

24. In respect of the proposed addition of the related offences of conspiracy and attempt, the Ministry of Justice, which is responsible for compiling these statistics, has informed us that they cannot separately identify conspiracies or attempts unless the statute specifically states the offence i.e. 'conspiracy to...'. Of the offences that we propose, this is only true for conspiracy to murder; the figures for the number of convictions of other offences of conspiracy or attempt are not separated out from the related substantive offence. Basing an estimate on the incidence of conspiracy to murder alone would not provide us with an accurate indication of the incidence of the new offences as a whole as the numbers of convictions for these is likely to vary significantly from offence to offence.
25. It has not been possible therefore to accurately estimate the number of convictions for related attempt and conspiracy offence. We believe the numbers will be very small, but if you have any data that may be useful to us in calculating the number of people likely to be affected, please submit it with your response.

### Groups Affected

26. Between April 2006 and March 2008, an average of 388 applications for a personal licence were refused per annum, representing 0.7% of all personal licence applications. Due to the small number of people that we anticipate will be affected, the Government does not estimate that this would be significantly increased by the proposed changes.
27. We believe that any costs will be felt by two groups, individuals and local authorities.

### **Individuals**

28. We are basing our costs to individuals on the following calculations:

Time to complete the necessary forms – estimated to be 1 hour	£10.61 <sup>1</sup>
Cost of applying and paying for a certificate that reveals the individual's	£23 (Disclosure

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<sup>1</sup> Based on Office of National Statistics' annual survey of hours and earnings, which values the hourly pay for all employee jobs at £10.61.



criminal record or lack of one.	Scotland)
Cost of paying a fee	£37
Cost of time to attend a course for one day – estimated to be 6 hours	£63.66
Cost of the course	£150 (average cost)
<b>Total</b>	<b>£284</b>

29. The cost to individuals whose application is refused is £284.
30. In reality however, we believe that many people with an unspent conviction for a relevant offence will be deterred from applying and will not incur any costs.
31. There is a potential loss of earnings cost for those that are prevented or deterred from obtaining a personal licence based on the assumption that a person could command higher wages as a personal licence holder. However, these proposals would not preclude them from working in licensed premises and would not affect them in other employment fields. We therefore feel that the effect of this will be marginal.

### Local authorities

32. Through increasing the number of relevant offences, the cost of an increase in the numbers of refused applications for local authorities would be represented in an increase in hearings.
33. When the fee levels were decided, they were established on the basis that the fee would cover the costs for processing and printing etc. However, the costs for disputes involving police intervention were also factored in, with the fee for all applicants designed to cover the small number of disputed costs and the administrative costs associated with the surrender of licences. As the assumption that the number of disputed cases would be small has been reflected in the statistics collected (an average of 0.53% of applications for a personal licence per annum went to a hearing between April 2006 and March 2008), and spread over the 378 local authorities, this cost should be covered by the personal licence application fees.
34. We therefore believe that the costs of the proposals for local authorities will be marginal.

### Conclusions

35. Other than failure to cooperate with a preliminary breath test, we have not been able to gather reliable data for convictions for the new offences on which to base predictions for the increase in refused personal applications that the new offences are likely to result in. Through talking to our partners and the research that we have carried out to investigate these proposals, we have come to the conclusion that a very small number of people will be affected by our proposals. We would however welcome any input that can help us to calculate this more accurately.

36. As a result of the small number of people that we estimate will be affected, we believe that costs of the proposals will be so small as to be recorded as **marginal** and that they will be outweighed by the benefits of increased scrutiny for personal licence holders.

### **Questions**

(N.B. These questions can also be found in the main body of the consultation.)

**Do you agree with the assumptions that we have made in calculating the costs of the proposals? Do you have any evidence to support your opinion?**

**Do you agree that the suggested costs and benefits set out in the Impact Assessment are a reasonable estimate of the potential costs and benefits?**

**Are you able to provide us with data that will help us to calculate the costs and benefits of the proposals?**

### **Key Assumptions**

37. Specific assumptions have been laid out in the sections above. We have also however made the following general assumptions:
38. As this will only apply to future applications and future applications for renewal, this consultation makes the assumption that there will be applications for personal licences made by people with unspent convictions for the offences proposed in this consultation in the future. Were this not the case, then it would not be necessary to include these offences. Our partners in the enforcement agencies have supported the need for these offences to be included and consider that it is necessary to include these offences. We are also however assuming that the number of people affected will be small.

### **Responses from Stakeholders**

39. This consultation has been preceded by discussions with law enforcement agencies and agreement has been reached on which offences to put forward. Whilst several other offences were considered, it was felt that they did not meet the requirements. There was general consensus that the offences that we are proposing were the most appropriate.

### **Specific Impact Tests**

### **Competition Assessment**

40. As this will be an amendment that will apply to all licensed premises equally, we do not believe that there will be an impact on competition.

### Small Firms Impact Test

41. As it is already a requirement that all licensed premises have at least one personal licence holder, we do not believe that the proposals will place a significant extra burden on small licensed premises. The proposals will only apply to new applications for a personal licence or renewals, so there will be no affect on existing premises until the personal licence holder needs to renew their licence, or there is a change in personal licence holder and this person has an unspent conviction for a new relevant offence. However, if this were the case, then it would be possible for the premises to nominate an employee without such a conviction.
42. There is a possibility that small firms with very few employees could be affected as if the personal licence holder were to have an unspent conviction for a relevant offence and need to renew their personal licence, they may need to hire an alternative employee and retrain them.
43. However, we have discussed this with stakeholders and they agree that this scenario will be rare and that well run companies will understand the reasoning behind these proposals.

### Rural Proofing

44. We do not believe that this will affect rural areas more than urban areas, but would be interested to know whether you think that small rural areas with very few licensed premises would be disproportionately affected.

### **Question**

**Do you believe that the proposals will affect rural areas differently? If so, why?**

### Health Impact Assessment Screening

45. We have answered the screening questions for a health impact assessment and do not believe a health impact assessment is necessary. The proposal only proposes adding one substantive offence (failure to cooperate with a preliminary test) and we do not believe that this will have a health impact.

**Department for Culture, Media and Sport: Equality Impact Assessment – Initial Screening**

Section	Notes
<p>1. Name of the function/policy to be assessed:</p> <p><b>Proposal to amend the list of relevant offences in Schedule 4 of the Licensing Act 2003</b></p>	
<p>2. What is the aim, objective or purpose of the policy?</p> <p><b>To give greater scrutiny over applicants for a personal licence who have unspent convictions for certain offences.</b></p> <p><b>To consult on whether to remove any offences currently in Schedule 4.</b></p>	
<p>3. What are the intended outcomes?</p> <p><b>To provide greater public protection through allowing police scrutiny of personal licence applicants who have been convicted of offences that may affect their ability to carry out the responsibilities of a personal licence holder in a satisfactory manner.</b></p> <p><b>To remove any unnecessary offences in Schedule 4 in order to cut unnecessary bureaucracy.</b></p>	<p><i>Consider:</i></p> <ul style="list-style-type: none"> <li>• <b><i>How will you monitor progress towards these outcomes?</i></b></li> <li>• <b><i>Do the outcomes support or hinder other policies, values or objectives within the Department?</i></b></li> <li>• <i>If they hinder other work is this justifiable?</i></li> </ul>
<p>4. Who are the key stakeholders?</p> <p><b>Enforcement authorities, such as police, licensing authorities and magistrates.</b></p> <p><b>Those involved with licensing policy implementation such as LACORS and LGA.</b></p> <p><b>Licensed premises and their representatives.</b></p> <p><b>Personal licence holders.</b></p>	<ul style="list-style-type: none"> <li>• <i>Who are the groups/individuals likely to be affected by the function or policy?</i></li> <li>• <i>Who else might have a significant interest in the implementation of this policy?</i></li> <li>• <i>Who else might have knowledge of the impact or potential impact of the policy or function?</i></li> </ul>
<p>5. Is the aim of the policy or any of its intended outcomes designed specifically to meet the Public Duties, for example to:</p> <ul style="list-style-type: none"> <li>➢ Eliminate discrimination?</li> <li>➢ Promote equality of opportunity?</li> <li>➢ Promote good relations between different groups?</li> </ul> <p><b>NO</b></p> <p><i>[Most functions, policies and practices will not be designed <b>specifically</b> to meet the Public Duties.]</i></p>	<ul style="list-style-type: none"> <li>• <i>For example, a policy that has the aim of preventing harassment and bullying</i></li> <li>• <i>If the answer is <b>YES</b> to any of the questions, then you are required to proceed to a full impact assessment. You should turn to section 13, though please note that sections 7-12 will help you to conduct a full assessment</i></li> </ul>

<p>You need only answer ‘yes’ if the <b>specific intent</b> of the function, policy or practice is to meet the public duties. Otherwise, move on to section 6]</p>	
<p>6. Does the function or policy involve or have consequences for members of the public or staff employed by the Department?</p> <p><b>YES</b></p>	<ul style="list-style-type: none"> <li>• If the answer is YES proceed to section 7</li> <li>• If the answer is NO list the evidence or other justification opposite or on an attached sheet that identifies why the function or policy has no consequences for members of the public or for staff employed by the Department</li> <li>• If the evidence that you have indicates that there is no impact or likely impact you do not need to conduct an impact assessment but you do need to monitor the implementation of the policy over time to ensure that there continues to be no impact on people. At a minimum this should be every three years</li> <li>• If you are sure the answer is NO, proceed to sections 13 and 14</li> </ul>
<p>7. Is there any evidence that tells you how the function or policy is working or is intended to work for the intended stakeholders?</p> <p><b>YES</b></p> <p><b>Schedule 4 of the Licensing Act 2003 already lists certain offences that result in police scrutiny for a personal licence applicant who has an unspent conviction for any of these offences. DCMS’s statistical bulletins show that the number of people affected is very small – an average of 393.65 per annum. The Government proposes adding one stand alone offence under section 6 of the Road Traffic Act 1988 and offences of attempt and conspiracy in relation to those offences already listed in Schedule 4.</b></p> <p><b>We have not been able to obtain reliable data to estimate the exact number of people affected by the new offences, but we believe that it will be small and have some evidence to support this.</b></p>	<ul style="list-style-type: none"> <li>• If you have no evidence available, then you will not be able to assess if the policy is relevant to equality</li> <li>• You will need to gather evidence about the effects of the policy on stakeholders. (Please refer to section 2 of the guidance notes on gathering evidence)</li> <li>• You should also consider consulting with stakeholder groups and involving disabled people at this stage (Please refer to section 5 on consulting and involving)</li> <li>• When you have gathered evidence of the effects of the policy on the intended stakeholders, you can then proceed with the initial screening</li> <li>• You should ensure that the actions necessary to collect the evidence are identified in an action plan</li> </ul>
<p>8. From the available evidence, is there any reason to believe that people are affected differently or are likely to be affected differently according to any of the listed equality strands, for example, because they have different needs or priorities?</p>	<ul style="list-style-type: none"> <li>• If the answer to any of these questions is Yes for any of the strands, you will need to proceed to a full impact assessment. In which case, proceed to section 13, though please note that sections 9-12 will</li> </ul>

	Yes	No	Not known
Age		X	
Disability		X	
Gender		X	
Race		X	
Religion		X	
Sexual Orientation		X	

Please summarise what the evidence shows and attach the evidence more fully to this screening document or reference where the evidence is available

**We have heard from stakeholders that the process of applying for a personal licence does not currently affect any of the above strands differently and see no reason why the proposed changes would do so.**

*help you to conduct a full assessment*

- *If the answer is No and the evidence supports this, proceed to section 9*
- *If your evidence is not enabling you to identify the impact on different groups, you will need to gather more evidence that allows you to do this. Refer back to section 7 above*

9. Is there any evidence that the function or policy in any way discriminates or might discriminate unlawfully, directly or indirectly against people from any of the listed strands, for example, in terms of access to a service, or the ability to take advantage of an opportunity?

	Yes	No	Not Known
<b>Age</b>		X	
<b>Disability</b>		X	
<b>Gender</b>		X	
<b>Race</b>		X	
<b>Religion</b>		X	
<b>Sexual Orientation</b>		X	

Please summarise what the evidence shows and attach the evidence more fully to this screening document or reference where the evidence is available

**As in Section 8, stakeholders have told us that the way that the system currently operates does not affect any of these strands differently. We see no reason why the proposed changes would do so.**

- *If the answer to any of these questions is Yes for any of the strands, you will need to proceed to a full impact assessment. In which case, proceed to section 13, though please note that sections 10-12 will help you to conduct a full assessment*
- *If the answer is No and the evidence supports this, proceed to section 10*
- *If your evidence is not enabling you to identify the impact on different groups, you will need to gather more evidence that allows you to do this. Refer back to section 7 above*

10. Are there Specific ways in which this policy positively promotes equality and inclusion. Mark down specific ways it already does, or will do this? Groups to consider: Disabled, Black and Minority Ethnic, Woman, Men, Transgender, Older, Younger, Faith Groups,

- *If the answer to any of these questions is Yes for any of the strands, you will need to proceed to a full impact assessment. In which case, proceed to section 13, though please note that sections 11-12 will*

<p>Gay Lesbian and Bisexual.</p> <p><b>No.</b>  <b>As in sections 8 and 9, we do not believe that this policy will affect these groups differently. This view has been supported by stakeholders.</b></p>	<p><i>help you to conduct a full assessment</i></p> <ul style="list-style-type: none"> <li>• <i>If the answer is No and the evidence supports this, proceed to section 11</i></li> <li>• <i>If your evidence is not enabling you to identify the impact on different groups, you will need to gather more evidence that allows you to do this. Refer back to section 7 above</i></li> </ul>																												
<p>11. Is there any evidence that people from the groups covered by the listed strands have or may have different expectations of the function or policy in questions?</p> <table border="1" data-bbox="137 701 804 981"> <thead> <tr> <th></th> <th>Yes</th> <th>No</th> <th>Not Known</th> </tr> </thead> <tbody> <tr> <td>Age</td> <td></td> <td>X</td> <td></td> </tr> <tr> <td>Disability</td> <td></td> <td>X</td> <td></td> </tr> <tr> <td>Gender</td> <td></td> <td>X</td> <td></td> </tr> <tr> <td>Race</td> <td></td> <td>X</td> <td></td> </tr> <tr> <td>Religion</td> <td></td> <td>X</td> <td></td> </tr> <tr> <td>Sexual Orientation</td> <td></td> <td>X</td> <td></td> </tr> </tbody> </table> <p>Please summarise what the evidence shows and attach the evidence more fully to this screening document or reference where the evidence is available</p> <p><b>Stakeholders do not believe that any of the groups above will have different expectations of the proposed regulatory change.</b></p>		Yes	No	Not Known	Age		X		Disability		X		Gender		X		Race		X		Religion		X		Sexual Orientation		X		<ul style="list-style-type: none"> <li>• <i>If the answer to any of these questions is Yes for any of the strands, you will need to proceed to a full impact assessment. In which case, proceed to section 13, though please note that sections 11-12 will help you to conduct a full assessment</i></li> <li>• <i>If the answer is No and the evidence supports this, proceed to section 11</i></li> <li>• <i>If your evidence is not enabling you to identify the impact on different groups, you will need to gather more evidence that allows you to do this. Refer back to section 7 above</i></li> </ul>
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<p><b>will not favour a particular group or deny opportunities to another.</b></p>																													
<p>13. Have previous consultations with relevant stakeholder groups or individuals indicated that policies of this type create exclusion or hold specific challenges for any of the listed groups?</p> <table border="1" data-bbox="137 495 804 775"> <thead> <tr> <th></th> <th>Yes</th> <th>No</th> <th>Not Known</th> </tr> </thead> <tbody> <tr> <td>Age</td> <td></td> <td>X</td> <td></td> </tr> <tr> <td>Disability</td> <td></td> <td>X</td> <td></td> </tr> <tr> <td>Gender</td> <td></td> <td>X</td> <td></td> </tr> <tr> <td>Race</td> <td></td> <td>X</td> <td></td> </tr> <tr> <td>Religion</td> <td></td> <td>X</td> <td></td> </tr> <tr> <td>Sexual Orientation</td> <td></td> <td>X</td> <td></td> </tr> </tbody> </table> <p><b>Our pre-consultation discussions with enforcement bodies and further discussion with stakeholders indicate that the proposals will not create exclusions or hold specific challenges for any of the groups listed.</b></p>		Yes	No	Not Known	Age		X		Disability		X		Gender		X		Race		X		Religion		X		Sexual Orientation		X		<ul style="list-style-type: none"> <li><i>If the answer to any of these questions is Yes for any of the strands, you will need to proceed to a full impact assessment. In which case, proceed to section 13</i></li> <li><i>If the answer is No and the evidence supports this, proceed to section 13</i></li> <li><i>If your evidence is not enabling you to identify the impact on different groups, you will need to gather more evidence that allows you to do this. Refer back to section 7 above</i></li> </ul>
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Religion		X																											
Sexual Orientation		X																											
<p>14. Is a full impact assessment required?</p> <p><b>NO</b>  <b>We do not believe that the proposals will affect any of the groups under the listed strands in a different way. The changes do not introduce a new aspect of the Licensing Act 2003, but rather amend a system that is currently operating and feedback from stakeholders indicate that the list of relevant offences does not affect any of the strands listed in a different way. We do not believe that the proposed changes would affect any of these strands differently.</b></p>	<ul style="list-style-type: none"> <li><i>If the answer is NO please use the space opposite to summarise why and attach any further supporting evidence</i></li> <li><i>If the answer is YES you will need to arrange to carry out a full impact assessment</i></li> <li><i>Please note that the information that you have already identified in this initial screening will be valuable to you in carrying out the full impact assessment</i></li> </ul>																												
<p>15. If a full impact assessment is not required, please indicate the plans to monitor the implementation of this policy over the next three years.</p> <p><b>If appropriate, we will check with key stakeholders whether the statement in section 14 is still correct 12 months after the regulatory change (subject to Parliament) is enacted.</b></p>																													
<p>16. Please return a copy of this form to:</p>	<p>Name: Anna Woodham</p>																												
	<p>Unit/Directorate: Licensing Policy Team; Sport and Leisure Directorate.</p>																												
	<p>Date: 06/12/2009</p>																												



## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

<b>Type of testing undertaken</b>	<b><i>Results in Evidence Base?</i></b>	<b><i>Results annexed?</i></b>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	Yes	Yes
Disability Equality	Yes	Yes
Gender Equality	Yes	Yes
Human Rights	No	No
Rural Proofing	Yes	No

# ANNEX D: GOVERNMENT CODE OF PRACTICE ON CONSULTATION

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## THE SEVEN CONSULTATION CRITERIA

**1. When to consult**

Formal consultation should take place at a stage when there is scope to influence the policy outcome.

**2. Duration of consultation exercises**

Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.

**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.

**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.

**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.

**6. Responsiveness of consultation exercises**

Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

**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.

# Agenda Item 14

## TOTAL NUMBER OF PREMISES AND PERSONAL LICENCES GRANTED UNDER OFFICER DELEGATED POWERS AND BY LICENSING SUB-COMMITTEES UP TO 30<sup>th</sup> NOVEMBER 2009

### Premises Licences

Type of Licence	No. Issued
Clubs	90
Entertainment Premises	55
Hotels	34
Off Licences	267
Public Houses	152
Restaurants	146
Take Aways	77
Other	13
<b>Total</b>	<b>834</b>

### Personal Licences

Personal Licences	1849
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### Temporary Event Notices (TENS)

Issued from December 2008 November 2009	408
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Date Determined	Premises	Applicant	Licensable Activities	Operating Hours
24-Sep-09 Minor Variation	Manor Wines, 11 Park View Road, Uxbridge, UB8 3LJ <i>Change of internal layout</i>	Mr K Pushpakanthan	Sale of Alcohol	08.00 - 23.00 Monday to Saturday 10.00 - 22.30 Sunday
30-Sep-09 Minor Variation	BK Salt Beef Bar Ltd, 8 Joel Street, Northwood, HA6 1PF <i>Change of internal layout</i>	BK Salt Beef Bar Ltd	Sale of alcohol Late Night Refreshment Regulated Entertainment	10.00 - 23.00 Monday to Saturday 10.00 - 22.30 Sunday
14-Oct-09 New Premises	Hatton Cross News & Café Kiosk, Hatton Cross Station <i>New Premises licence for the sale of alcohol</i>	Mr M Patel	Sale of alcohol	0600 - 2200 each day
21-Oct-09 Minor Variation	Griddles Bar (ex Culvert), Cowley Mill Road, Uxbridge <i>Change of internal layout</i>	Greene King Retailing	Sale of alcohol Regulated entertainment Late night refreshment	1200 - 0230 Sunday to Thursday 1200 - 0330 Friday to Saturday
27-Oct-09 Variation of Premises Licence	Ruislip Manor Sports & Social Club, Grosvenor Vale, Ruislip <i>Variation to extend the licensed hours and activities</i>	Ruislip Manor Sports & Social Club	Sale of alcohol Regulated entertainment Late night refreshment	0830 - 2400 Monday to Wednesday 0830 - 0030 Thursday to Saturday 1200 - 2330 Sundays
27-Oct-09 Variation of Club Licence	Ruislip Manor Sports & Social Club, Grosvenor Vale, Ruislip <i>Variation to extend the licensed hours and activities</i>	Ruislip Manor Sports & Social Club	Supply of alcohol Regulated entertainment Late night refreshment	0830 - 2400 Monday to Wednesday 0830 - 0030 Thursday to Saturday 1200 - 2330 Sundays
3-Nov-09 Variation	Kebab Choice II (ex Manhattans), 232 High Street, Uxbridge <i>Variation to licensed hours</i>	Mr Ecran Mazi	Late Night Refreshment	1100 - 0430 each day
4-Nov-09 Minor Variation	Coach & Horses, High Road, Ickenham <i>Variation to extend the licensed hours</i>	Mitchells & Butlers Ltd	Sale of Alcohol Regulated entertainment Late Night Refreshment	1000 - 0030 Sunday to Thursday 1000 - 0130 Friday to Saturday
12-Nov-09 Minor variation	London Heathrow Marriott Hotel, Bath Road, West Drayton <i>Removal of condition relating to 18R films</i>	Jayne Hillner	Sale of alcohol Regulated entertainment Late Night Refreshment	0730 - 0230 Each day
12-Nov-09 Minor Variation	The Gate, Rickmansworth Road, Northwood <i>Change of internal layout</i>	Mitchells and Butlers Ltd	Sale of alcohol Late Night Refreshment	1000 - 0030 each day
12-Nov-09 Minor variation	F J Off Licence, 25 Station Road, West Drayton <i>Change of internal layout</i>	Mr V Johnson	Sale of alcohol	0600 - 2300 each day
01/12/09 Minor Variation	4 Nations Cuisine, 68-72 Joel Street, Northwood <i>Change of internal layout</i>	Aunchallee Vannasut	Sale of alcohol Regulated entertainment Late night refreshment	1100 - 0100 Sunday - Thursday 1100 - 0200 Friday - Saturday
05/12/09 New Premises	Zabka Polish Deli, 5b Windsor Street, Uxbridge <i>New premises licence for the sale of alcohol</i>	Mrs Solinska	Sale of alcohol	1000 - 2000 Monday to Saturday 1100 - 1600 Sundays
08/12/09 New Premises	Ocean City, 248 Yeading Lane, Hayes <i>New premises licence for the sale of alcohol</i>	Mr Xue Zhu Chen	Sale of alcohol	1200 - 2300 Monday to Saturday 1200 - 2230 Sundays
09/12/09 Minor Variation	Bluebeckers, The Duck House, High Street, Ruislip <i>Change of internal layout</i>	Bluebeckers Ltd	Sale of alcohol Regulated Entertainment Late night refreshment	1000 - 0030 Monday to Saturday 1000 - 2400 Sundays
11/12/09 Minor Variation	Compass Theatre, Glebe Avenue, Ickenham <i>Minor variation to add the exhibition of films</i>	Martin Zouch	Sale of alcohol Regulated Entertainment Late night refreshment	1000 - 2300 Monday to Saturday 1200 - 2230 Sundays
14/12/09 New premises	Hayes Gate Football Club, Springfield Road, Hayes <i>New premises licence</i>	Hayes Gate FC Ltd	Sale of alcohol Regulated Entertainment Late night refreshment	0900 - 0230 Each day
14/12/09 New premises	St Raphaels Parish Centre, Ayles Road, Yeading <i>New premises licence</i>	St Raphaels Church	Regulated Entertainment	0800 - 0030 each day
15/12/09 Minor Variation	Dawley Food & Wine, 7 Dawley Road, Hayes <i>New premises licence</i>	Aman Singh Madhan	Sale of Alcohol	0800 - 2300 Monday to Saturday 1000 - 2230 Sundays
15/12/09 Minor Variation	Red Lion Hotel, Royal Lane, Hillingdon <i>Removal of condition relating to the external patio</i>	Fullers Smith & Turner	Sale of Alcohol Regulated Entertainment Late Night Refreshment	0800 - 0130 each day
18/12/09 New premises	New Moon Pizza, 4 Halls Terrace, Uxbridge Road, Hillingdon <i>New premises licence</i>	Mr A Tarin	Late Night Refreshment	1200 - 0145 each day

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<b>Period December 2008 - November 2009</b>														
<b>New premises licence applications by type and month</b>														
	<b>Dec</b>	<b>Jan</b>	<b>Feb</b>	<b>Mar</b>	<b>Apr</b>	<b>May</b>	<b>Jun</b>	<b>Jul</b>	<b>Aug</b>	<b>Sep</b>	<b>Oct</b>	<b>Nov</b>	<b>Totals</b>	
<b>Clubs</b>									3			1	4	
<b>Entertainment prems</b>	1										1	1	3	
<b>Hotels</b>													0	
<b>Off Licences</b>	1	1	2	3	2	2		2	2	1		2	18	
<b>Pubs</b>													0	
<b>Restaurants</b>						1	2	3					6	
<b>Take Aways</b>	1					1	1				1		4	
<b>Other</b>				1					1	1			3	
<b>Totals</b>	<b>3</b>	<b>1</b>	<b>2</b>	<b>4</b>	<b>2</b>	<b>4</b>	<b>3</b>	<b>5</b>	<b>6</b>	<b>2</b>	<b>2</b>	<b>4</b>	<b>38</b>	
<b>Variation and Minor Variation applications by type and month</b>														
	<b>Dec</b>	<b>Jan</b>	<b>Feb</b>	<b>Mar</b>	<b>Apr</b>	<b>May</b>	<b>Jun</b>	<b>Jul</b>	<b>Aug</b>	<b>Sep</b>	<b>Oct</b>	<b>Nov</b>	<b>Totals</b>	
<b>Clubs</b>								1			2		2	
<b>Entertainment prems</b>										1			1	
<b>Hotels</b>											1	1	0	
<b>Off Licences</b>			2		1	1	1		2	1		1	2	
<b>Pubs</b>				2		1	1	1			3		3	
<b>Restaurants</b>	2	2	1	1				2		2		2	4	
<b>Take Aways</b>											2		2	
<b>Other</b>													0	
<b>Totals</b>	<b>2</b>	<b>2</b>	<b>3</b>	<b>3</b>	<b>1</b>	<b>2</b>	<b>2</b>	<b>4</b>	<b>2</b>	<b>4</b>	<b>8</b>	<b>4</b>	<b>14</b>	

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A list of Licensing Sub-Committee decisions from July to September 2009

Date Determined	Premises	Reason for Hearing	Decision
13-Nov-09 New premises	The Great Barn, Manor Farm Site, Ruislip <i>New premises licence application for the sale of alcohol and regulated entertainment</i>	Multiple objections and petitions from local residents	Licence granted with restrictions and extra conditions.

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## CUSTOMER SATISFACTION SURVEY

<b>Committee</b>	Licensing Committee
<b>Officer Contact</b>	Linda Etherington, Licensing Officer      01895 556799
<b>Papers with report</b>	Survey results
<b>Ward(s) affected</b>	ALL

### SUMMARY

To update the Licensing Committee on the results of satisfaction surveys conducted in respect of the Licensing Act 2003

### RECOMMENDATION

**That the Committee note the information below**

### INFORMATION

As part of the Peer Challenge process it was recommended that regular customer satisfaction surveys be conducted by the Licensing Service.

The **first** customer group consulted in summer 2008 was Licensing Solicitor and Agents. (See Appendix 1)

Of the 50% who responded to the questionnaire, 66% found the Licensing Service to be *Excellent* and 33% rated it as *Good*. A more detailed analysis is attached at Appendix 2.

The **second** customer group consulted during summer 2009 was all premises licence holders for pubs, restaurants and hotels. See Appendix 3.

100% of the premises licence holders who replied to the survey were *satisfied* or *very satisfied* with the Licensing Service. More details are given in Appendix 4.

A **third** satisfaction survey will be undertaken in 2010 for premises licence holders for off licences and late night refreshment premises.

### FINANCIAL IMPLICATIONS

None

### LEGAL IMPLICATIONS

None

### BACKGROUND PAPERS

Copies of survey letter  
Copies of survey results

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HILLINGDON

LONDON

APPENDIX 1

Person's name  
Person's position / Company  
1st Line of address  
2nd line of address  
County  
ABC 2DE

Date:

Dear Sir/Madam

**BUSINESS SATISFACTION QUESTIONNAIRE  
THE LICENSING ACT 2003**

Our records show that you have recently contacted the London Borough of Hillingdon's Licensing Service.

I would be grateful if you would complete the attached questionnaire in order that we can establish whether we are providing a service that you consider satisfactory. Will assess all comments received and use them to help us find ways to improve the service within the resources we have available.

Please find enclosed a stamped addressed envelope for your reply.

Firstly, please indicate whether you agree or disagree with each of the following statements about your contact with the *Licensing Service*:-

Please answer the following questions:

**Q1 Was your application determined within the required time limit?**

Yes  No

**Q2 If you had personal contact with any of the Licensing Officers, were they courteous and polite?**

Yes  No

Directorate  
Environment & Consumer Protection  
T.01895 277394 F.01895 250223  
ksparks@hillington.gov.uk www.hillingdon.gov.uk  
London Borough of Hillingdon,  
3S/03, Civic Centre, High Street, Uxbridge, UB8 1UW



INVESTOR IN PEOPLE

**Q3 Did we give you information/advice that was easy to understand?**

*Very easy*  *Fairly easy*  *Fairly difficult*  *Very difficult*

**Q4 If you have been in touch with the Licensing Service on more than one occasion, have you been treated consistently on each occasion?**

Yes  No

**Q5 How did you find the overall level of service?**

*Excellent*  *Good*  *Poor*

**If you were not satisfied with the service, please give a reason why:**

---

---

**Please suggest any improvements that the service could make:**

---

---

---

Thank you for completing this questionnaire

Yours faithfully

Kathy Sparks  
Deputy Director of Environment and Consumer Protection

## Satisfaction survey carried out in respect of Licensing Solicitors, Licensing Agencies etc. October 2008

50% of companies canvassed responded to the survey

Responses as percentage of replies received:-

**Q1 Was your application determined within the statutory time limit?**

Yes **100%** No **0**

**Q2 Was your enquiry or request dealt with promptly?**

Yes **100%** No **0**

**Q3 If you had personal contact with any of the Licensing Officers, were they courteous and polite?**

Yes **63%** No **0** N/a **37%**

**Q4 Did we give you information/advice that was easy to understand?**

Very easy **50%** Fairly easy **33%** Fairly difficult **0** Very difficult **0**

**Q5 If you have been in touch with the Licensing Service on more than one occasion, have you been treated consistently on each occasion?**

Yes **90%** No **0** N/a **10%**

**Q6 How did you find the overall level of service?**

Excellent **66%** Good **33%** Fair **0** Poor **0**

### Comments received:-

Turbervilles – LBH Licensing Services is one of the best we deal with

Hodders – I have always found Hillingdon to be one of the most helpful licensing authority

Hammonds – Exemplary licensing team – helpful and efficient, we have a good working relationship with Norman & co

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HILLINGDON

LONDON

APPENDIX 3

Date:

Dear Sir/Madam

### Satisfaction Questionnaire – Licensing Act 2003

As a Premises Licence Holder/Designated Premises Supervisor under the Licensing Act 2003, you should have received a visit by one or more of the council's Licensing Officers in the last twelve months.

I would be grateful if you would complete the following questionnaire in order that I can establish whether the Licensing Service is providing a service that you consider satisfactory. I will assess all comments received and use them to help find ways to improve the service within the resources I have available.

Please find enclosed a stamped addressed envelope for your reply.

Firstly, please indicate whether you agree or disagree with each of the following statements about your contact with Licensing Service.

#### Q1. I felt my business was treated fairly

Strongly agree  Agree   
Disagree  Strongly disagree  Not applicable

#### Q2. I felt the contact was helpful

Strongly agree  Agree   
Disagree  Strongly disagree  Not applicable

Cont'd overleaf.....

Licensing Service  
Environment & Consumer Protection Services  
T.01895 556799 F.01895 250011  
letherington@hillington.gov.uk www.hillington.gov.uk  
London Borough of Hillingdon,  
3S/09, Civic Centre, High Street, Uxbridge, UB8 1UW



INVESTOR IN PEOPLE

Please answer the following questions:

**Q3 If we gave you information and advice, how easy was it to understand?**

Very easy  Fairly easy  Fairly difficult  Very difficult

**Q4 If we have been in touch with your business on more than one occasion, have you been treated consistently on each occasion?**

Yes  No

**Q5 Which of the following Officers did you deal with?**

**Norman Stanley**   
Was the Officer polite and courteous at all times? Yes  No

**Linda Etherington**   
Was the Officer polite and courteous at all times? Yes  No

**Sharon Garner**   
Was the Officer polite and courteous at all times? Yes  No

**Alan Golding**   
Was the Officer polite and courteous at all times? Yes  No

**Licensing Service Office**   
Were the staff polite and courteous at all times? Yes  No

If you have answered 'No' to Q5 please provide details:

**Q6 If we said that your business was not meeting its legal/technical requirements:**

a) Did we make it clear to you what you needed to do to meet the legal/technical requirements?

Yes  No

b) Was our response to this problem fair/reasonable?

Yes  No



INVESTOR IN PEOPLE

If you have answered 'No' to Q6 please provide details:

**Q7 How satisfied were you with our overall level of service?**

*Very satisfied*     *Satisfied*      
*Very dissatisfied*     *Dissatisfied*   

**If you were not satisfied with our service, please give a reason why:**

**Please suggest any improvements that the Licensing Service could make in the way that it deals with Premises Licence Holders/Designated Premises Supervisors:-**

Thank you for completing this questionnaire

Yours faithfully



Kathy Sparks  
Deputy Director of Environment and Consumer Protection



INVESTOR IN PEOPLE

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APPENDIX 4

<b>Licensing Customer Satisfaction Survey of pubs, restaurants and hotels 2009.</b>				
<b>Letters sent 260</b>	<b>Replies received 88</b>			
	<b>Strongly Agree/Agree</b>		<b>Disagree</b>	<b>Strongly Disagree</b>
<b>Q1</b> I felt my business was treated fairly	100%		0	0
<b>Q2</b> I felt the contact was helpful	100%		0	0
	<b>Very Easy</b>	<b>Fairly Easy</b>	<b>Fairly Difficult</b>	<b>Very Difficult</b>
<b>Q3</b> If we gave you information and advice how easy was it to understand?	61%	35%	1	0
	<b>Yes</b>	<b>No</b>		
<b>Q4</b> If we have been in touch with your business on more than one occasion have you been treated consistently on each occasion?	92%	1%		
<b>Q5</b> Was the officer polite and courteous at all times?	93%	1%		
<b>Q6</b> If we said that your business was not meeting its legal/technical requirements:				
<b>a)</b> Did we make it clear to you what you needed to do to meet the legal/technical requirements?	64%			
<b>b)</b> Was our response fair/reasonable?	64%			
	<b>Very satisfied/satisfied</b>		<b>Very Dissatisfied</b>	<b>Dissatisfied</b>
<b>Q7</b> How satisfied were you with our overall level of service?	100%		0	0

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## STREET TRADING

<b>Committee</b>	The Licensing Committee
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<b>Officer Contact</b>	Beejal Soni, David Frost, Bill Hickson
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<b>Papers with report</b>	Appendix A: Draft Rules of Procedure for Licensing Sub-Committee Hearings on Street Trading Applications & Street Trading Regulations
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### HEADLINE INFORMATION

<b>Purpose of report</b>	To advise Members of a decision by Council to extend the powers of the Licensing Committee; To recommend that Members authorise the Licensing Sub Committees to consider and determine all Street Trading applications
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<b>Contribution to our plans and strategies</b>	This report contributes to the Council's priorities for a Clean and Attractive borough, its Sustainable Community Strategy and for Opportunities Open to All.;
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<b>Financial Cost</b>	Any cost consideration is expected to be absorbed within existing budgets
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<b>Relevant Policy Overview Committee</b>	Not Applicable
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<b>Ward(s) affected</b>	All
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### RECOMMENDATION

The Licensing Committee is asked:

1. To note that the Council of the London Borough of Hillingdon has granted Licensing Committee the necessary powers to determine all street trading applications;
2. To authorise Licensing Sub Committees to consider and determine all Street Trading applications made under Part III of the London Local Authorities Act 1990 (as amended)
3. To approve the draft Rules of Procedure for Licensing Sub-Committee Hearings on Street Trading Applications as attached at Appendix A.

### INFORMATION

## **Reasons for recommendation and urgency**

This report was prepared as a consequence of Hillingdon Council's decision on 14 January 2010 to authorise the Licensing Committee to consider and determine all Street Trading applications made under the London Local Authorities Act 1990 (as amended). The Licensing Committee is advised to urgently take the necessary steps to give effect to these new powers.

The majority of street trading licences currently in operation are due to expire on 31 March 2010. In order to prevent inconveniencing traders and to ensure that street trading licences do not lapse, the Licensing Committee is advised to urgently authorise Licensing Sub-Committees to consider and determine Street Trading Applications.

In order to ensure that hearings are conducted in a fair and transparent manner, it is recommended that the procedure detailed in Appendix 1 of this report is approved.

## **Alternative options considered / risk management**

No alternative decision is available. Any delay in adopting the recommendations will unfairly prejudice traders by preventing the timely renewal of existing licences.

## **Supporting Information**

### **Part III of the London Local Authorities Act 1990 (as amended) ["the Act"]**

In 1993, the London Borough of Hillingdon implemented Part III of the London Local Authorities Act 1990 (as amended) in order to effectively control and regulate street trading activities in the borough. As part of the programme of implementation, street trading in designated streets would have to be licensed, with the Council being awarded powers to consult and introduce street trading licence terms and conditions. To date, the terms and conditions introduced in 1993 have not been updated or amended.

A simple definition of Street Trading is any trading activity which takes place on designated streets within 7 metres of the public highway. As per the definition in the legislation, Street Trading activity includes the placing of shop displays and tables and chairs on public property within 7 metres of the highway.

The Act regulates various aspects of the trading activity including enforcement action that may be taken, rules relating to the trading stalls, registration requirements for new application and renewals, mandatory grounds for the rejection of an application and appeal rights of traders. The Act further makes allowances for the issue of temporary and permanent licences. Temporary Licences are valid for a maximum period of 6 months whilst permanent Licences are valid for more than 6 months but less than 3 years.

### **Changes to Street Trading Regulations and Processes In the London Borough of Hillingdon**

As a result of the implementation of a service review in 2008, Street Trading services were transferred to the Street Scene Enforcement Team.

A review of Street Trading services in 2009 highlighted the need to update the existing terms and conditions for street trading licences. It also suggested the implementation of various



powers which will improve the enforcement of matters related to street trading, tables and chairs and shop displays on the highway.

In order to ensure greater transparency in the street trading licensing process, and as a result of a public consultation exercise undertaken by the Street Scene Enforcement Team, the Council delegated to the Licensing Committee the power to determine Street Trading Applications. Policy issues related to Street Trading matters remain the remit of the Cabinet.

Consequently, it is anticipated that Licensing Sub-Committees will determine matters related to new applications for a Street Trading Licence and applications for the renewal / variation / revocation of an existing Street Trading Licence.

Various recommendations related to policy issues are due to be discussed at Cabinet level on 21 January 2010. Up to date information regarding Street Trading licence terms, conditions and street designation will be provided immediately following the Cabinet meeting. In the interim, a copy of the relevant Street Trading legislation has been provided to Members.

The Act requires that any change implemented by Cabinet be advertised for a period of at least 28 days before coming into effect. Consequently, it is anticipated that any changes decided by Cabinet will come into effect on 26 February 2010.

Major renewal exercises of Street Trading Licences will be undertaken in March and September of every calendar year.

Members are asked to note that as a result of the Notice periods involved with advertising the applications for renewals and hearings, it is likely that for this renewal period only, all Street Trading Hearings for renewals will take place in the last week of March 2010.

Members are advised that there are currently 193 street traders licensed to the London Borough of Hillingdon. Following the implementation of new regulations in February 2010, a rise in Street Trader numbers is anticipated. Seventy-five (75) licences will require renewal hearings before 31 March 2010. Members are therefore advised that it is likely that additional Sub-Committee hearing dates will be arranged between 25 March and 31 March 2010. The remainder of temporary licences (expected to be approximately 110) will be considered during the financial year as they are submitted.

### **Draft Implementation Timetable**

It is anticipated that all Licensing Committee Members will receive training on Street Trading Legislation and Regulations in February 2010.

The following draft timetable is being worked on in order to effect timely implementation of the changes detailed above:

- 1) **26 February 2010:** Changes to Street Trading Licensing and Regulations come into effect;
- 2) **26 February onwards:** Street Scene Enforcement Team receives applications for renewal of Street Trading Licences;

- 3) **26 February – 10 March 2010:** Applications received will be advertised for objections;
- 4) **11 March – 16 March 2010:** Notice of Hearings and Agenda published by Democratic Services
- 5) **25 March – 31 March 2010 :** Licensing Sub-Committee meetings take place to determine applications to renew Street Trading licences.

### **Rules of Procedure for Licensing Sub-Committee Hearings on Street Trading Applications**

As a result of the short lead-in time for the implementation of the changes, Members are requested to consider and approve the attached draft rules of procedure that will apply to all Street Trading Licences.

The relevant points of procedure to note are:

1. Hearings will take place as soon as reasonably possible. Every attempt will be made to ensure that the hearings take place within 10 working days of the end of the period within which objections are lodged;
2. Hearings will be conducted in the same manner and as per the principles and evidentiary rules currently in place for Licensing Act 2003 hearings;
3. There will be no officer delegation to decide matters where no objections are received – Members will therefore be responsible for determining all Street Trading applications;
4. A member of the Street Scene Enforcement Team will present the Sub-Committee with the relevant application report;
5. In the event of an opposed application, a Sub-Committee may adjourn hearings in order to conduct a site inspection;
6. Correspondence advising traders of the outcome of the hearing will be despatched within 5 working days of the hearing;
7. As is permitted by the Licensing Act 2003, Ward Councillors may address the Sub-Committee in their capacity as Ward Councillors or on behalf of an objector/group of objectors on condition that relevant notice is provided to Democratic Services.

It is expected that a simple process guide for members of the public will be prepared in due course.



HILLINGDON  
LONDON

# Part III of the London Local Authorities Act 1990 (as amended) : Street Trading

## Rules of Procedure for Licensing Sub-Committee Hearings

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### 1. SCOPE

- 1.1 These procedure rules apply to Licensing Sub-Committees established by the Licensing Committee of Hillingdon Council acting as Licensing Authority. The rules are subject to Street Trading legislation as contained in Part III of the London Local Authorities Act 1990 (as amended)
  
- 1.3 The purpose of these procedure rules is to guide the Licensing Sub-Committees through the various stages of the hearing process and to direct the sub-committee hearing a case, and all other parties involved, on the essential procedural requirements to be followed before, during and after a hearing.

### 2. SUB-COMMITTEES

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#### Role, Composition and Quorum

- 2.1 All hearings under these procedure rules will be conducted by licensing sub-committees for the sole purpose of determining applications for and in relation to licences as required under Street Trading legislation as contained in Part III of the London Local Authorities Act 1990 (as amended) [the “Act”].
- 2.2 A sub-committee will usually consist of three members drawn from the Licensing Committee. The quorum for hearings and meetings of a sub-committee is two members. Each meeting shall be chaired by a designated Licensing Sub-Committee Chairman.
- 2.3 The Head of Democratic Services, or his representative (usually the Clerk to the Licensing Committee) shall appoint each sub-committee taking into account the need for it to be politically balanced, where possible; the need to involve all members of the Licensing Committee as equally as possible; the need to avoid involving members with an interest in the item to be discussed or members from the ward in which the subject premises is located; and the timescale available for determining applications.
- 2.3 Where hearings are convened, sub-committees are not ordinarily subject to the normal committee procedures established under the Local Government Act 1972 and the Council Procedure Rules. For example, a Member who is not on the sub-committee hearing the case cannot address the proceedings in his/her capacity as an elected member, except where the member has properly made a representation or is formally representing objectors.

### **Power to adopt own Procedure**

- 2.4 Except where otherwise prescribed by the Act, the sub-committee has wide powers to adopt its own procedures as to the general order and manner in which the hearing is to be conducted. For example, it may in any particular case dispense with or modify these Rules of Procedure.

## **3. BEFORE THE HEARING**

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### **Time Limits for Setting up Hearings**

- 3.1 The Act does not prescribe a specific period of time within which a hearing is to be held. It is expected that a hearing will to be commenced as soon as is reasonably practicable after the deadline for making representations and in any case where a hearing is likely to exceed more than one day it must be arranged to take place on consecutive days.
- 3.2 The relevant sub-committee may at any time postpone the original date on which the hearing is to be held to a new date that it may specify if it considers it necessary to enable it to consider any information or documents provided by a party or having regard to the ability of any party, person representing a party or witness to attend the hearing
- 3.3 Without prejudice to paragraphs 3.1 and 3.32, every effort will be made to arrange for hearings to be held within 10 working days after the end of the period within which representations may be made by responsible authorities and interested parties.

## **Notice Procedures**

- 3.4 In order to hold a fair and transparent hearing, the Street Scene Enforcement Team and parties to proceedings are required to notify each other of relevant information in advance of the hearing as follows:

### Notice of Hearing from the Licensing Authority

- 3.5 Notice shall given to all parties to the hearing specifying the date, time and place at which the hearing is to be held.
- 3.6 The Notice of Hearing shall be sent so that, in the ordinary course of events, it is received no later than 10 working days before the first day on which the hearing is to be held.
- 3.7 However, when the sub-committee has postponed the original hearing date it shall, as soon as reasonably practicable, notify the parties of the new date, time and place for the hearing.
- 3.8 The Notice of Hearing shall be accompanied by information in writing regarding the following:

- (i) This procedure note or a procedure guide , the report from the Street Scene Enforcement Officer and copies of written objections / petitions received;
- (ii) Confirmation that a party may be assisted / represented by a person who does not have to be legally qualified;
- (ii) The consequences if a party:
  - (a) Informs the sub-committee that he/she does not wish to attend or be represented at the hearing, or
  - (b) Fails to inform the relevant committee whether he/she wishes to attend or be represented at the hearing, or
  - (c) Informs the sub-committee that he/she wishes to attend or be represented at the hearing, but fails to attend or be represented.
- (iii) the legal requirements imposed on the sub-committee in conducting the hearing.
- (iv) the procedure the sub-committee will follow at the hearing.
- (v) time limits and method by which a party should inform the sub-committee whether he/she wishes: to attend or address the hearing, be assisted or represented by another person, call a witness to give evidence and in relation to what matters that witness will give evidence, to withdraw any representations or to consent to the application being determined without a hearing
- (vi) any matters on which the Street Scene Enforcement Team considers that it will want clarification from a party.

### Notice of Attendance from the Parties

3.9 Upon receipt of the Notice of Hearing, and by no later than 2 working days before the day or first day on which the hearing is to be held, each party must give to the sub-committee a notice in writing stating:

- (i) whether he/she wishes to attend or address the hearing;
- (ii) whether he or she wishes to be assisted or represented by another person;
- (iii) whether he/she wishes to call a witness to give evidence at the hearing and the matters in relation to which he/she wishes that witness to give evidence;

- (iii) whether he/she wishes to consent to the application being determined without his/her presence
- (iv) any special needs (for example language translation) to be accommodated

3.10 Such notice may be given either by completing and returning to the authority the pro-forma “Notice of Attendance” that accompanies the Notice of Hearing, or by providing any other form of written notification. Notices may be sent by post, fax or email.

### Notice of Withdrawal of Representations

- 3.11 A party who wishes to withdraw any objection they have made may do so:
- (i) by giving notice to the licensing authority no later than 24 hours before the day of the hearing; or
  - (ii) orally at the hearing

### **Street Scene Enforcement Team Officer’s Report**

3.12 A report on the application to be determined will be formulated by the authority’s Street Scene Enforcement Team officers, which will contain a summary of the application, objections, their technical observations and recommendations.

### **Agenda for the Hearing**

3.13 The Head of Democratic Services or Clerk to the Licensing Committee shall send out the agenda for the hearing (which will include the Licensing Officer’s report) to all parties in advance of the hearing.

### **Consequences of failure to Attend Hearing**

3.14 The sub-committee committee may proceed with a hearing in the absence of a party or a party’s representative if the party has:

- (i) informed the sub-committee that he/she does not intend to attend or be represented at the hearing (and has not subsequently advised the sub-committee otherwise) ;
- (ii) failed to inform the sub-committee whether he/she intends to attend or be

represented at the hearing; or

- (iii) left the hearing in circumstances enabling the sub-committee reasonably to conclude that he/she does not intend to participate further.

3.15 Where the hearing is held in the absence of a party, the relevant committee shall consider at the hearing the application or objections made by that party.

3.16 If a party has indicated that he does intend to attend or be represented at the hearing, but fails to so attend or be so represented, the relevant committee may

- (i) adjourn the hearing to a specified date if it considers it to be in the public interest, or
- (ii) proceed with the hearing in the party's absence.

3.17 Where, the relevant committee adjourns the hearing to a specified date it shall, as soon as reasonably practicable, notify the parties of the date, time and place to which the hearing has been adjourned.

## **4. THE HEARING**

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### **Principles to be applied**

4.1 Subject to paragraph 4.2 and 4.3 below, the hearing shall take place in public.

4.2 The sub-committee may direct that all or part of a hearing must be held in private if it is satisfied that it is necessary in all the circumstances of the case, having had regard to:

- (i) any unfairness to a party that is likely to result from hearing in public; and
- (ii) the need to protect as far as possible, the commercial or other legitimate interests of a party.

4.3 Issues that involve personal details such as medical conditions or criminal records will normally be held in private session.



- 4.4 Changes to the membership of the sub-committee will be announced at the beginning of the hearing.
- 4.5 The hearing will take the form of a discussion led by the Chairman of the relevant committee. As the hearing is not a court:
- (i) strict rules of evidence will not apply (see paragraphs 5.3 below for further details as to evidence).
  - (ii) evidence will not be taken on oath.
  - (iii) comments and questions are to be directed through the sub-committee Chairman.
  - (iv) cross-examination will not be permitted unless the sub-committee considers that cross-examination is required for it to consider the representations or application.
  - (v) evidence, discussion and address must be relevant to the Act.
  - (vi) all representations and other information received from absent parties will be considered.
- 4.6 The sub-committee will have regard to the common law rules of natural justice and the Human Rights Act 1998 when exercising its decision-making functions, with particular reference to Article 6 of the European Convention of Human Rights which provides that:
- “...in the determination of civil rights and obligations, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law”.*
- 4.7 A party may be assisted or represented at the hearing by any person whether or not that person is legally qualified. For the avoidance of doubt, a party may be assisted or represented by their Ward Councillor. However, no member sitting on the relevant sub-committee hearing the case can represent any of the interested parties or applicant.

### **Procedure at the Hearing**

- 4.8 The order of business shall be at the discretion of the sub-committee, but will normally proceed in accordance with the following paragraphs or as shown in the flow chart attached at *Appendix 1*:

- 4.9 The Chairman shall at the beginning of the hearing introduce the members of the sub-committee, invite the parties to identify themselves and then explain to the parties the procedure that the sub-committee intends to follow.
- 4.10 The Street Scene Enforcement Team Officer will then be invited by the Chairman to present the relevant details of his/her report (referred to in paragraph 3.11 above), and any other information regarding any details relevant to the application or representations which may have come to light since the report was written. Alternatively, the Chairman may proceed directly to paragraph 4.11 below.
- 4.11 Parties or their representatives will normally be invited to address the sub-committee in the following order:
- (i) Applicant
  - (ii) Objectors
- 4.12 Where there is more than one objection raising the same or similar grounds, the Chairman will encourage parties to agree that only one party address the sub-committee on behalf of the parties who have made the representations in question.
- 4.13 Each party shall be entitled to:
- (i) address the sub-committee or call witnesses
  - (ii) provide further information on, or explanation of, any matter on which the licensing authority has indicated that it would want further clarification under paragraph 3.7(vi) above.
  - (iii) subject to paragraph 4.4(iv) above, question any other party or person representing a party on any matter that is relevant to the application, or representation made on the application, where in all the circumstances the sub-committee considers it is appropriate to do so.
- 4.14 The sub-committee will take into consideration documentary or other information in support of the application or objections produced by a party:
- (i) before the hearing; or
  - (ii) at the hearing, with the consent of all other parties attending the hearing.

- 4.15 At any time during the hearing, parties or their representatives or any of their witnesses may be asked questions upon their presentation or evidence by any member of the sub-committee.
- 4.16 At any time during the hearing, the sub-committee may decide to adjourn hearing to the earliest possible date or to a later time on the same date in order to conduct a site inspection of the relevant application. All site inspections will preferably be conducted in the presence of all parties to a Hearing. A party to a hearing may decline to attend such a site inspection. In such a situation, the site inspection may take place in the absence of the relevant party.
- 4.16 The parties shall be entitled to make closing submissions and will normally be invited to do in the following order:
- (i) Street Scene Enforcement Officer
  - (ii) Objector
  - (iii) Applicant
- 4.17 The sub-committee may place a time limit on a party's speaking rights as set out in paragraphs 4.13 and 4.16 above, but all parties shall be allowed an equal maximum period of time.
- 4.18 The sub-committee may require any person who in his/her opinion is behaving in a disruptive manner to leave the hearing and may refuse to permit that person to return or to return upon complying with such conditions as the relevant committee may specify. However, any such person will be allowed to submit any evidence in writing that they proposed to give orally, provided they do so before the end of the hearing.
- 4.19 At the conclusion of evidence and closing submissions, the sub-committee will adjourn into closed session in order to deliberate and reach a decision. During this process only the Legal Adviser and Committee Clerk will remain with them.
- 4.20 If, during its deliberations, the sub-committee considers that it is necessary for any person present at the hearing to provide further information or clarification on a particular point, the hearing may be re-convened to deal with that issue before reaching a decision.

## **Role of Legal Advisor**

- 4.21 The sub-committee may seek advice or clarification of any procedural, technical or legal matter from the legal adviser at any time during the course of the hearing.
- 4.22 The legal adviser will provide the Sub-Committee with any advice it requires properly to perform its functions whether or not the Sub-Committee requested that advice, on:
- (i) questions of law or of mixed fact and law;
  - (ii) matters of practice and procedure;
  - (iii) the range of options available to the Sub-Committee;
  - (iv) Relevant national guidance, policy or codes;
  - (v) Other issues relevant to the matter before the Sub-Committee;
  - (vi) The appropriate decision-making structure to be applied in any given case.
- 4.23 The legal adviser may ask questions of witnesses and the parties in order to clarify the evidence and any issues in the case. The legal adviser is under a duty to ensure that every case is conducted fairly.
- 4.23 The legal adviser will play no part in making findings of fact but may assist the Sub-Committee by reminding it of the evidence taken from his/her own or the committee clerk's notes.
- 4.25 The legal adviser will assist the Sub-Committee where appropriate as to the formulation of reasons and the recording of those reasons.

## **5. THE DECISION**

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### **Principles to be applied**

- 5.1 Each application will be determined on its own merits and the sub-committee shall make its decision based upon the merits of the individual circumstances of each case and its considerations shall be restricted to the evidence placed before it (see paragraph 5.3 and 5.4 below on how evidence will be assessed);

- 5.2 All decisions reached by a sub-committee shall be supported by reasons and a summary of the relevant evidence supporting those reasons. All decisions reached by the sub-committee must comply with the Act.

## **Evidence**

- 5.3 While court rules of evidence will not strictly apply, they will, however, be followed to a great extent because sub-committee decisions must be based upon an objective assessment of the evidence. Hearsay evidence is permitted but will be given less weight than direct evidence. Evidence given in person where the testing of that evidence is possible through questioning, or cross-examination if appropriate, is likely to be given more weight than evidence or representations which are presented only in writing.
- 5.4 If the sub-committee considers that the evidence of a party is not relevant to the issue(s) to be decided, it shall be disregarded.

## **Time Limit**

- 5.6 The relevant sub-committee shall determine the application on the last day on which the hearing was held. So, if the hearing finishes on a Monday, the determination must occur on the same day.
- 5.7 A verbal decision is given to the public at the end of the hearing or at the end of the relevant agenda item.

# **6. AFTER THE HEARING**

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## **Notification of Decision**

- 6.1 After the hearing, formal notice of the sub-committee's decision and related information, such as any conditions that may be imposed on the street trading licence, shall be communicated to all parties to the proceedings, in writing, within 5 working days of a verbal decision being given.
- 6.2 The decision notice shall further point out that if the applicant (who is also the holder of a Permanent Street Trading Licence) is dissatisfied with the decision of the sub-committee there is a right of appeal to the Registrations and Appeals Committee which

must be exercised within 21 days from the date of receipt of the written notice of decision.

- 6.3 All decisions upon an application shall further be published for viewing on the Council's official website.

ORDER OF PROCEEDINGS

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**Introduction by the Council's Street Scene Enforcement Team Officer**



The Street Scene Enforcement Officer will introduce the report and will outline impartially the matter before the sub-committee, giving any relevant background information.

**The Applicant (if present)**



The applicant presents their case and brings forward any witnesses. Members of the sub-committee or the Legal Adviser may ask questions to clarify evidence given.

**Objectors (if any objections are made)**



The Objectors present their case, including any written correspondence and/or calling any witnesses in support of their objections. Members of the sub-committee or the Legal Adviser may ask questions to clarify evidence given

**OPTIONAL - DISCUSSION LED BY THE CHAIRMAN**  
 A discussion may occur if there is a need for the parties involved to clarify each other's cases. At this point parties may ask questions of each other on any matter relevant to the application or any representations.



**Closing Submissions from Each Party**

The Street Scene Enforcement Officer, Applicant and Objectors make brief closing submissions on the application for decision. The applicant makes the final closing remarks.



**Sub-Committee Deliberates**

The sub-committee will remain in the room to deliberate and make their decision, with only the Legal Advisor and Clerk to the Committee remaining. All other present will be asked to leave the room.



**Chairman may announce Decision**

Parties may return to the room when asked and the Chairman announces the decision. The Chairman reminds the applicant that the decision will be sent to them in writing. There can be no further questions or statements

