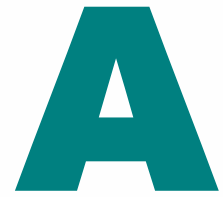




HILLINGDON
LONDON



Licensing Committee

Date: TUESDAY, 31 AUGUST
2010

Time: 5.00 PM

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

Councillors on the Committee:

Andrew Retter (Chairman)
Josephine Barrett (Vice-Chairman)
Lynne Allen
David Allam
Bruce Baker
Mike Bull
Judy Kelly
Peter Kemp
Janet Gardner
Carol Melvin

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Published: Monday, 23 August 2010

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This Agenda is available online at:
<http://modgov.hillingdon.gov.uk/ieListDocuments.aspx?CId=257&MId=890&Ver=4>

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www.hillingdon.gov.uk



INVESTOR IN PEOPLE

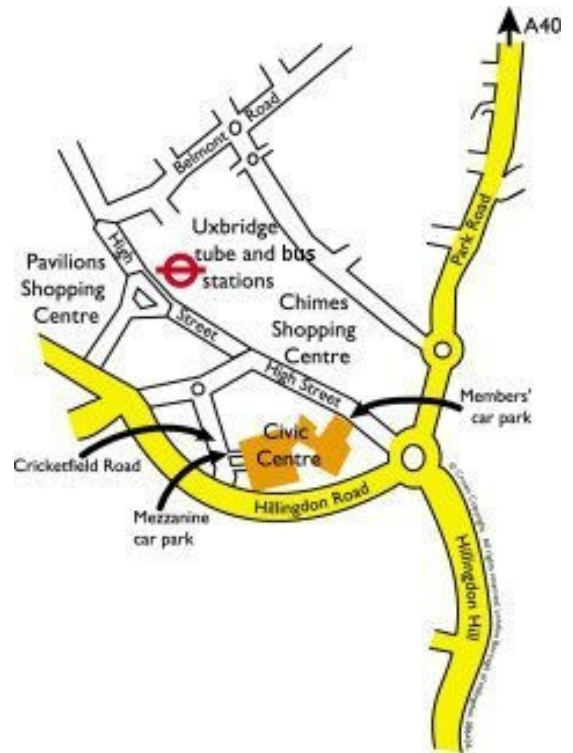
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Agenda

- 1 Apologies for Absence
- 2 Declarations of Interest in matters coming before this meeting
- 3 To confirm that the items of business marked Part 1 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 July 2010

Part 1 (Public)

- 5 HOME OFFICE CONSULTATION - REBALANCING THE LICENSING ACT

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Minutes

LICENSING COMMITTEE

1 July 2010

**Meeting held at Committee Room 3 - Civic Centre,
High Street, Uxbridge UB8 1UW**



	<p>Committee Members Present: Councillors Andrew Retter (Chairman), Josephine Barrat (Vice-Chairman), Lynne Allen (Labour Lead), David Allam, Mike Bull, Judy Kelly, Peter Kemp and Carol Melvin.</p> <p>LBH Officers Present: Natasha Dogra (Democratic Services Officer), Linda Etherington (Licensing Officer), Sharon Garner (Licensing Officer), Beejal Soni (Legal Advisor) and Stephanie Waterford (Licensing Officer).</p>	
1.	<p>APOLOGIES FOR ABSENCE (<i>Agenda Item 1</i>)</p> <p>Apologised were received from Cllr Bruce Baker and Cllr Janet Gardner.</p>	Action by
2.	<p>DECLARATIONS OF INTEREST IN MATTERS COMING BEFORE THIS MEETING (<i>Agenda Item 2</i>)</p> <p>None.</p>	Action by
3.	<p>TO CONFIRM THAT ALL ITEMS MARKED PART I WILL BE CONSIDERED IN PUBLIC AND ALL ITEMS MARKED PART II WILL BE CONSIDERED IN PRIVATE (<i>Agenda Item 3</i>)</p> <p>It was confirmed that all matters on the agenda were marked Part I and would be considered in public.</p>	Action by
4.	<p>TO AGREE THE MINUTES OF 22 APRIL 2010 (<i>Agenda Item 4</i>)</p> <p>The minutes of 22 April 2010 were agreed by the Committee.</p>	Action by
5.	<p>THE LICENSING ACT 2003 MANDATORY CONDITIONS (<i>Agenda Item 5</i>)</p> <p>Officers introduced the report which updated Members on the classification of films under the Licensing Act 2003. The following mandatory condition was imposed on all premises licences which included the Exhibition of films:-</p> <p>“The admission of children shall be restricted according to the classification given by the British Board of Film Classification or the Licensing Authority for <i>the film being shown.</i>”</p>	Action by

	<p>It was possible that the Licensing Authority would be requested to re-classify a film which had been classified by the BBFC or to classify a film which had not been considered by the BBFC. Requests could be made by a member of the public or an organisation wishing to show an unclassified film.</p> <p>The Licensing Service had therefore drawn up a procedure to be followed if this situation arises.</p> <p>Members asked officers how this mandatory condition could be enforced. Officers informed Members that following a complaint, officers would consult with management and investigate the procedures at the premises, which could involve a test purchase. Training schedules would be scrutinised and further training would be suggested as necessary. Officers and Members were in agreement that a certain degree of responsibility lay with the parents of the children.</p> <p>Members suggested that a change be made to the Film Authorisation Procedures. Point 3.3 should read:</p> <p><i>“Where an individual or organisation which is not connected with the film(s) requests re-classification of BBFC classified film they are expected to provide a copy of the film(s). The Licensing Authority will make suitable arrangements for a Licensing Sub Committee to view the film.”</i></p> <p>Agreed: The Committee approve and endorse the new procedure relating to film classification.</p>	Licensing Service
6.	<p>REVIEW OF THE COUNCIL'S STATEMENT OF LICENSING POLICY <i>(Agenda Item 6)</i></p> <p>Officers presented the report to the Committee. Officers informed Members that the Licensing Act 2003 required the Council, as the Licensing Authority, to review its statement of licensing policy every three years. This was the second full review of the policy since implementation of the Act on 2005. The Council would need to approve and adopt the revisited policy which would be effective from 2011 to 2014.</p> <p>In January 2010 a working party was convened to carry out the second full review of the Council’s Statement of Licensing Policy. The working party were of the opinion that the existing format of the current policy should be retained as it was concise and easy for Members, Officers and members of the public to use.</p> <p>It was brought to the attention of Members that the working party had agreed that some sections of the policy needed to be amended in order to include the recent changes to the legislation, such as the new mandatory conditions. In addition, some members of the working party suggested changes to reflect current working practices between the “Responsible Authorities”</p>	Action by

	Agreed: The Committee noted the report.	
8.	<p>LICENSING COMMITTEE INFORMATION (<i>Agenda Item 8</i>)</p> <p>Officers presented Members with figures relating to the number of licenses granted between April 2010 and June 2010. Members questioned why some applications had been granted minor variations to their licenses. Officers said some very minor variations to licences were approved by the Licensing Service and the relevant responsible authority e.g. the Metropolitan Police Service rather than being subject to the full variation process. The minor variations were still advertised on the premises.</p> <p>Members of the Committee discussed the best way to inform ward Councillors and Committee Members of new and variation premises licence applications that are submitted to the Licensing Service. Members requested Licensing Officers to email all Committee Members and local Ward Councillors a copy of each new application and variation application as they are submitted.</p> <p>The Committee discussed the recent training day given by Philip Kolvin QC they attended and were in agreement that the training was very useful. During the training, the Committee had been made aware of the provisions contained within the Hearing Regulations under the Licensing Act 2003. Philip Kolvin made the Committee aware that they have the discretion to deliberate and determine the application within 5 days of the hearing. The Committees decision must be published within 5 days of the decision being made.</p> <p>Noted: The Committee noted the Licensing Committee Information.</p>	Action by
9.	<p>ANY ITEMS DEFERRED FROM PART I (<i>Agenda Item 9</i>)</p> <p>None.</p>	Action by
10.	<p>ANY ITEMS DEFERRED FROM PART II (<i>Agenda Item 10</i>)</p> <p>None.</p>	Action by
The meeting, which commenced at 10.00 am, closed at 11.40 am.		

These are the minutes of the above meeting. For more information on any of the resolutions please contact Natasha Dogra on 01895 277 488. Circulation of these minutes is to Councillors, Officers, the Press and Members of the Public.

Agenda Item 5

HOME OFFICE CONSULTATION – REBALANCING THE LICENSING ACT

Committee

Licensing Committee

Officer Contact

Stephanie Waterford

Tel: 01895 277232

Papers with report

- **Annex 1** - Home Office Consultation Document
- **Annex 2** - Home Office Impact Assessment

Ward(s) affected

All

SUMMARY

To obtain the Licensing Committee's opinion of the Home Office's proposals and to seek their views in respect of the specific questions raised in Section 11 in order for a response to be drafted by the Licensing Officer and submitted to the Home Office by 8th September 2010.

RECOMMENDATION

That Members consider the consultation document and instruct the Licensing Officer in regard to their thoughts on each question raised.

INFORMATION

The new government coalition is introducing a number of new proposals which will overhaul the Licensing Act 2003 by giving more powers to Licensing Authorities.

A brief summary of the measures is:

- Give licensing authorities the power to refuse licence applications or call for a licence review without requiring relevant representations from a responsible authority.
- Remove the need for licensing authorities to demonstrate their decisions on licences 'are necessary' for (rather than of benefit to) the promotion of the licensing objectives.
- Reduce the evidential burden of proof required by licensing authorities in making decisions on licence applications and licence reviews.
- Increase the weight licensing authorities will have to give to relevant representations and objection notices from the police.
- Simplify Cumulative Impact Policies to allow licensing authorities to have more control over outlet density.
- Increase the opportunities for local residents or their representative groups to be involved in licensing decisions, without regard to their immediate proximity to premises.
- Enable more involvement of local health bodies in licensing decisions by designating health bodies as a responsible authority and seeking views on making health a licensing objective.
- Amend the process of appeal to avoid the costly practice of rehearing licensing decisions.
- Enable licensing authorities to have flexibility in restricting or extending opening hours to reflect community concerns or preferences.
- Repeal the unpopular power to establish Alcohol Disorder Zones and allow licensing authorities to use a simple adjustment to the existing fee system to pay for any additional policing needed during late-night opening.

- Substantial overhaul of the system of Temporary Event Notices to give the police more time to object, enable all responsible authorities to object, increase the notification period and reduce the number that can be applied for by personal licence holders.
- Introduce tougher sentences for persistent underage sales.
- Trigger automatic licence reviews following persistent underage sales.
- Ban the sale of alcohol below cost price.
- Enable local authorities to increase licensing fees so that they are based on full cost recovery.
- Enable licensing authorities to revoke licences due to non-payment of fees.
- Consult on the impact of the Mandatory Licensing Conditions Order and whether the current conditions should be removed.

The Home Office are seeking Licensing Authorities views in respect of the new proposals and the specific questions detailed on page 23 of the consultation document in Annex 1.

The closing date for the consultation is 8th September 2010.

FINANCIAL IMPLICATIONS

There are no direct financial implications with responding to a Home Office consultation. However it should be noted that changes that result in increased licensing activities or associated activities will increase costs of the service, as long as these costs can be passed onto the licensee holder via appropriate adjustments to fees then there should be no detrimental financial impact on the Local Authority.

LEGAL IMPLICATIONS

The proposals, if implemented, will increase the scope of local involvement in licensing and decision-making processes – particularly if proposals to remove the “vicinity” requirement are removed. Detailed legal advice will be given at the Committee meeting with regard to possible responses that the Committee is minded submit.

The Home Office has confirmed that the majority of the proposals in the Home Office consultation will be introduced via the Police Reform and Social Responsibility Bill - due to be introduced into Parliament in October. However, any changes to the Licensing Act 2003 will not be brought into force until 2012 at the earliest. Therefore, the current legal requirement to review the Council’s Licensing Policy and have same approved at Council remains unaffected. Such a review and the resultant policy must be based on the law as it currently stands rather than being based on changes proposed in this consultation.

BACKGROUND PAPERS

- The Licensing Act 2003
- DCMS Guidance issued under S182 of the Licensing Act 2003



Home Office

REBALANCING THE LICENSING ACT

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

MINISTERIAL FOREWORD



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

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

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

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

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

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



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1. EXECUTIVE SUMMARY

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

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

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

2. BACKGROUND

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

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

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

COALITION AGREEMENT

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

- We will overhaul the Licensing Act to give local authorities and the police much stronger powers to remove licences from, or refuse to grant licences to, any premises that are causing problems.
- We will allow councils and the police to shut down permanently any shop or bar found to be persistently selling alcohol to children.
- We will double the maximum fine for underage alcohol sales to £20,000.
- We will permit local councils to charge more for late-night licences to pay for additional policing.
- We will ban the sale of alcohol below cost price.

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

SHIFTING THE BALANCE OF RESPONSIBILITY FOR ALCOHOL RELATED CRIME AND DISORDER

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

STRIKING THE RIGHT BALANCE – PROMOTING BUSINESS AND CRIME PREVENTION

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

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

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

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

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

3. ABOUT THIS CONSULTATION

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

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

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

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

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

DEVOLVED ADMINISTRATIONS

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

IMPACT ASSESSMENT

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

4. LICENSING LEGISLATION

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

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

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

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

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

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

4.05. The four licensing objectives are:

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

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

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

5. GIVING MORE LOCAL POWERS TO REFUSE AND REVOKE LICENCES

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

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

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

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

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

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

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

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

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

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

INVOLVING THE COMMUNITY AND THEIR REPRESENTATIVES

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

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

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

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

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

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

PUBLIC HEALTH

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

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

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

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

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

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

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

OVERHAULING THE APPEALS PROCESS FOR LICENCE APPLICATION DETERMINATIONS

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

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

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

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

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

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

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

APPEALS BY APPLICANTS ON LICENCE REVIEWS

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

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

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

6. DEALING WITH THE PROBLEMS OF LATE NIGHT DRINKING

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

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

EARLY MORNING RESTRICTION ORDERS

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

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

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

ALCOHOL DISORDER ZONES

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

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

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

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

CUMULATIVE IMPACT POLICIES

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

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

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

LATE NIGHT LEVY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7. TEMPORARY EVENT NOTICES

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

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

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

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

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

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

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

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

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

Consultation Question 20: What would be the consequences of

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

8. PROTECTING CHILDREN FROM THE HARM OF ALCOHOL

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

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

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

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

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

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

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

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

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

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

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

9. BANNING BELOW-COST SALES

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

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

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

LEGISLATIVE OPTIONS FOR BANNING BELOW-COST SALES

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

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

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

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

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

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

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

INCREASES IN LICENCE FEES

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

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

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

AUTOMATIC REVOCATION OF LICENCE FOR NON-PAYMENT OF FEES.

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

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

DEREGULATION

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

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

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

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

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

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

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

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

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

11. RESPONSES TO CONSULTATION

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

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

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

ANNEX A

CONSULTATION CRITERIA

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

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

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

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

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

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

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

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

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

CONSULTATION CO-ORDINATOR

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

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

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

Title: Impact Assessment for the Alcohol Measures in the Consultation Lead department or agency: Home Office Other departments or agencies:	Impact Assessment (IA)
	IA No: HO0013
	Date: 01/01/2010
	Stage: Consultation
	Source intervention: Domestic
	Type of measure: Primary legislation
Contact for enquiries: Jonathan Allinson 0207 035 3127	

Summary: Intervention and Options

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

Since the introduction of the Licensing Act there has been growing concern that the original vision of a vibrant "café culture" has failed to materialise, with alcohol related crime estimated to cost between £8-13bn a year.

The Government intends to introduce more flexibility into the current licensing regime to allow local authorities and the police to clamp down on alcohol-related crime and disorder hot spots within local night-time economies, to protect children from the harm of alcohol, prevent the below cost sale of alcohol, amend the licence fee system so that it covers licensing authorities cost, and consider repealing the Mandatory Code.

What are the policy objectives and the intended effects?

The policy objectives of the alcohol measures in the coalition agreement are:

- i. Overhaul the licensing act
- ii. Deal with the problems of Late Night Drinking
- iii. Protect children from the harm of alcohol
- iv. Ban the below cost sale of alcohol
- v. Ammend the licence fee system
- vi. Consider repealing older legislation

What policy options have been considered? Please justify preferred option (further details in Evidence Base)

Option 1 – Do nothing

Option 2 – Introduce the measures laid out in the coalition document and subsequent consultation (please see Annex 3 for a full list of the policies contained being consulted on for Option 2)

When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?	It will be reviewed
Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?	Yes

SELECT SIGNATORY 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: 28 July 2010

Summary: Analysis and Evidence

Policy Option 1

Description:

Price Base Year 2011	PV Base Year	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: £337.1m
COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Cost (Present Value)
Low	Optional		Optional		Optional
High	Optional		Optional		Optional
Best Estimate	NA		£6.5m		£55.07m
Description and scale of key monetised costs by 'main affected groups'					
An estimated average annual cost of £6.5m over 10 years to be paid for by On-Licence and Off-Licence premises in increased Licence Fees. This is only an indicative cost, using the fee-rise recommended in the Elton review of Licence Fees (2006).					
Other key non-monetised costs by 'main affected groups'					
There may be a small transitional cost to local authorities of enforcing the proposals but this will be outweighed by savings in the cost of dealing with alcohol-related problems in the future.					
BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Benefit (Present Value)
Low	Optional		Optional		Optional
High	Optional		Optional		Optional
Best Estimate	NA		£45.6m		£392.2m
Description and scale of key monetised benefits by 'main affected groups'					
An estimated average annual benefit of £45.6m over 10 years to be raised for (a) business by repealing the Mandatory Code for Alcohol Retailers and (b) for licensing authorities through increased licence fees. This is only an indicative benefit, using the fee-rise recommended in the Elton review of licence fees (2006).					
Other key non-monetised benefits by 'main affected groups'					
N/A					
Key assumptions/sensitivities/risks					Discount rate (%)
Assumptions - that a similar upgrade in licence fees to that recommended in the Elton Review (2006) would be applied if Licence Fees were to be upgraded in order to cover local authority costs associated with licensing.					

Impact on admin burden (AB) (£m):			Impact on policy cost savings (£m):		In scope
New AB: NA	AB savings: NA	Net: NA	Policy cost savings: NA		Yes/No

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?	England and Wales				
From what date will the policy be implemented?	01/01/2010				
Which organisation(s) will enforce the policy?	Licensing authorities and police				
What is the annual change in enforcement cost (£m)?	N/A				
Does enforcement comply with Hampton principles?	Yes				
Does implementation go beyond minimum EU requirements?	N/A				
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)	Traded: N/A		Non-traded: N/A		
Does the proposal have an impact on competition?	No				
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?	Costs: N/A		Benefits: N/A		
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro	< 20	Small	Medium	Large
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties ¹ Statutory Equality Duties Impact Test guidance	Yes/No	
Economic impacts		
Competition Competition Assessment Impact Test guidance	Yes/No	
Small firms Small Firms Impact Test guidance	Yes	
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	Yes/No	
Wider environmental issues Wider Environmental Issues Impact Test guidance	Yes/No	
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	Yes/No	
Human rights Human Rights Impact Test guidance	Yes/No	
Justice Justice Impact Test guidance	Yes/No	
Rural proofing Rural Proofing Impact Test guidance	Yes/No	
Sustainability Sustainable Development Impact Test guidance	Yes/No	

¹ Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Implementation).

No.	Legislation or publication
1	The Coalition: Our Plan for Government, HMG (2010), p13-14. (http://www.cabinetoffice.gov.uk/media/409088/pfg_coalition.pdf)

Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

Annual profile of monetised costs and benefits* - (£m) constant prices

	Y ₀	Y ₁	Y ₂	Y ₃	Y ₄	Y ₅	Y ₆	Y ₇	Y ₈	Y ₉
Transition costs	0	0	0	0	0	0	0	0	0	0
Annual recurring cost	£6.5m	£6.5m	£6.5m	£6.5m	£6.5m	£6.5m	£6.5m	£6.5m	£6.5m	£6.5m
Total annual costs	£6.5m	£6.5m	£6.5m	£6.5m	£6.5m	£6.5m	£6.5m	£6.5m	£6.5m	£6.5m
Transition benefits	0	0	0	0	0	0	0	0	0	0
Annual recurring benefits	£45.6m	£45.6m	£45.6m	£45.6m	£45.6m	£45.6m	£45.6m	£45.6m	£45.6m	£45.6m
Total annual benefits	£45.6m	£45.6m	£45.6m	£45.6m	£45.6m	£45.6m	£45.6m	£45.6m	£45.6m	£45.6m

* For non-monetised benefits please see summary pages and main evidence base section

Evidence Base (for summary sheets)

A. Strategic Overview

A.1 Background

1. This Impact Assessment forms part of the public consultation on the alcohol measures within the Coalition Agreement. It has not been possible to quantify all of the expected costs and benefits of the proposals at this stage and we urge respondents to the consultation to supply any additional evidence they may have.
2. Where costs have been estimated these estimates should be viewed as indicative estimates only. All cost estimates are economic costs and not financial costs.
3. We will continue to assess the costs and benefits of these proposals and will publish a final Impact Assessment once the consultation responses have been analysed and the final legislative programme has been developed.

A.2 Groups Affected

4. The groups affected by the policy will include the following:

Enforcement agencies

- Licensing authorities
- Police forces
- Magistrates Courts

The Alcohol Trade

- On and Off Licensed Premises
- Alcohol manufacturers

Government and Third Sector

- Local health bodies
- Alcohol charities

B. Rationale

5. Alcohol plays an important part in the cultural life of this country, employing large numbers in production, retail and the hospitality industry. The industry as a whole contributes around £8.5bn to the Exchequer through excise duty alone, and over 200,000 premises have a licence to sell alcohol. Central to this is a system of alcohol licensing that is effective in regulating sales and reflective of local demands.
6. Since the introduction of the Licensing Act there has been growing concern that the original vision of a vibrant “café culture” has failed to materialise. The Government intends to introduce more flexibility into the current licensing regime to allow local authorities and the police to clamp down on alcohol-related crime and disorder hot spots within local night-time economies. The measures outlined in this document are being proposed to rebalance the licensing system by overhauling the current licensing regime and giving more power to local authorities and the police to respond to local concerns about their night-time economy, as well as protecting children from the harm of alcohol, preventing the below cost sale of alcohol and amending the licence fee system so that it covers licensing authorities’ costs.

Alcohol-related crime

7. According to the 2008/09 British Crime Survey, victims believed the offender(s) to be under the influence of alcohol in 47 per cent of all violent incidents, equivalent to 973,000 violent offences. Whilst the number of violent offences has fallen by over a fifth since the early-2000s (see figure 1), the proportion of violent offences that are alcohol-related has remained stable (see figure 2).

Figure 1: Violent incidents and alcohol-related violence, 2001/02 to 2008/09²

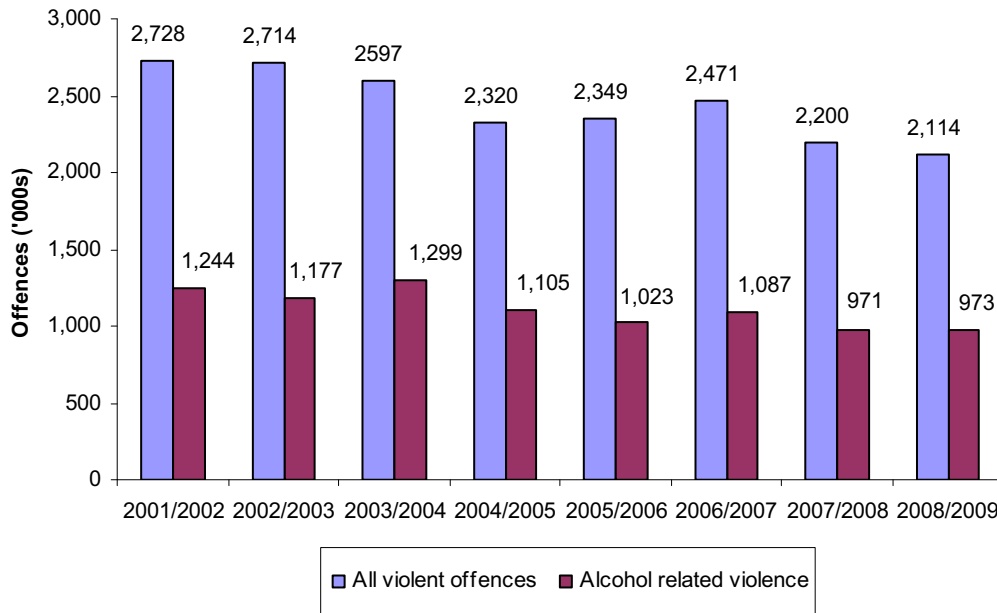
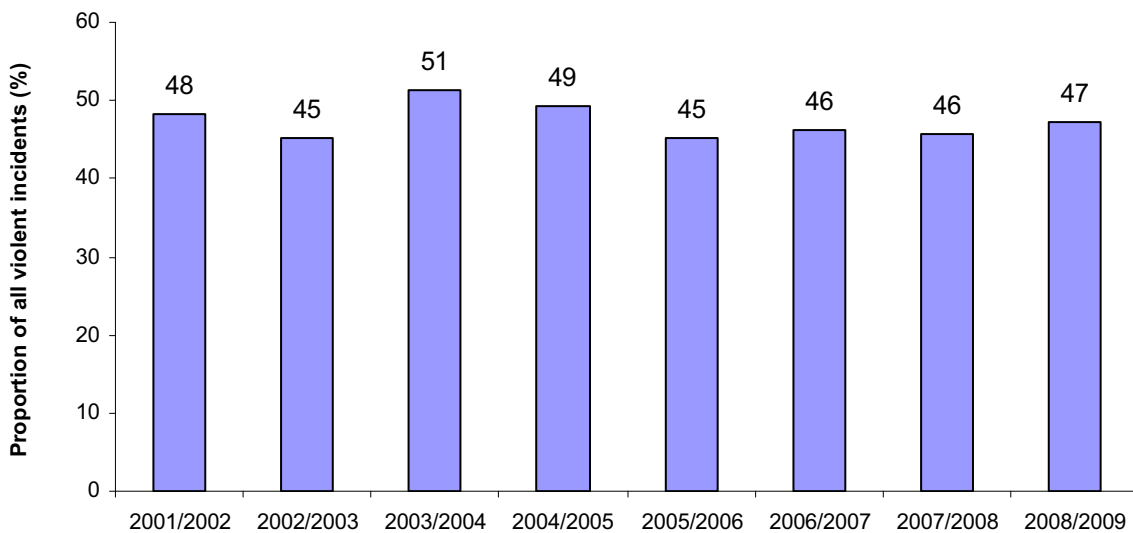


Figure 2: Violent incidents where the victim believed the offender(s) to be under the influence of alcohol, 2001/02 to 2008/09³



8. More than half of people surveyed (53%) also thought that alcohol was one of the major causes of crime in 2008/09, an increase from 52% in the previous year. However, a much smaller proportion (8%) thought it was the main cause of crime in Britain today. Results from the 2008/09 survey⁴ also

² Crime in England and Wales 2008/09, Home Office Statistical Bulletin 08/09

³ Crime in England and Wales 2008/09, Home Office Statistical Bulletin 08/09. N.B. These percentages cannot be derived from the figures presented in Figure 1 due to the weightings used in the British Crime Survey.

⁴ Crime in England and Wales 2008/09: Supplementary Tables: Nature of burglary, vehicle-related theft, personal and other household theft, vandalism, and violent crime

show that 21% of all violence occurred in or around a pub or club and 48% of all violent offences occurred between Friday evening and Monday morning.

Perceptions of drunk or rowdy behaviour

9. Perceptions of crime are an important factor in social welfare as it is often perceptions, rather than reality, that determine how much individuals are willing to spend in anticipation of crime in order to reduce either the likelihood or impact of an incident.
10. According to the British Crime Survey, the percentage of people who think drunk and rowdy behaviour is a fairly or very big problem in their area has risen, from 19% in 2003/4 to 24.8% in 2008/09. Perceptions of this problem are likely to be heavily influenced by binge-drinking and by young people drinking alcohol in public.

Underage sales

11. Although it is illegal for a person under 18 to buy, or attempt to buy, alcohol, and it is illegal for alcohol to be sold or supplied to a person under 18⁵, there is good evidence that underage sales are still occurring. The Tackling Underage Sales of Alcohol Campaign in summer 2007 showed an overall test purchase failure rate of 14.7%. Around 40% of premises tested sold to children on at least one occasion. Although these premises were targeted on the basis of local intelligence, this figure is still unacceptably high.
12. A survey of 11-15 year olds in 2008⁶ found that where the young person had attempted to buy alcohol from a shop in the last month, 73% had been successful. Where the young person had attempted to buy alcohol from a pub or club in the last month, 82% had been successful.

The Licensing Act 2003

13. The Licensing Act 2003 allows licensing authorities to impose conditions on a licence in order to support the four licensing objectives on a case-by-case basis. The four licensing objectives are:
 - prevention of crime and disorder;
 - public safety;
 - prevention of public nuisance; and
 - protection of children from harm
14. Since the introduction of the Licensing Act there has been growing concern that the original vision of a vibrant “café culture” has failed to materialise. The Government intends to address many of the problems in the act through the measures outlined in the paper.

Pre-consultation meetings regarding the proposals contained in the coalition agreement

15. Ahead of this consultation Government officials held a number of discussions with key stakeholders representing the alcohol industry, police and local enforcement agencies, health and third sector organisations to discuss what impact the proposals in the coalition agreement will have on their sectors. The proposals that are being consulted on were informed by these views.

⁵ Although a 16 or 17 year old may consume alcohol with a table meal.

⁶ *Smoking, drinking and drug use among young people in 2008*, NHS Information Centre

C. Objectives

16. The government is committed to reducing the impact of alcohol-related crime and anti-social behaviour on our communities. Therefore, the objective of introducing these policy proposals is to:
- give licensing authorities and other local stakeholders greater power to tackle problem premises in their area
 - toughen the consequences for those premises which sell alcohol to children
 - tackle the problems associated with late night drinking
 - amend licence fees so that they cover costs
 - consider repealing older legislation

D. Options

Option 1 is to make no changes (do nothing).

Option 2 (preferred option): Introduce the following policy proposals to deliver the coalition agreement

NB – Please see Annex 3 for full list of policies being consulted on

Overhaul the licensing act

Policies a-h - Increase local powers to refuse and revoke licences

17. Under the provisions in the 2003 Licensing Act there is a fundamental presumption in favour of granting a licence application to sell alcohol, which makes it difficult for local authorities to turn down applications. We are consulting on overhauling the licensing system to empower local councils and the police to clamp down on binge drinking hotspots and irresponsible retailers. In the consultation this proposal is broken down into policies (a-h) as listed in annex 3, the detail of which are outlined below:
- The Government proposes to change the balance of the Licensing Act to make licensing authorities more pro-active and empowered to take decisions. Currently under the Licensing Act a licensing authority can only refuse or remove a licence, or impose conditions on the licence upon review, if it can be proved that this 'is necessary' for the promotion of the licensing objectives and if a relevant representation has been made by a Responsible Authority. Refusals on this basis are rare because the Licensing Authority is not a responsible authority under the Act. To make existing powers stronger and more responsive to local needs the consultation proposes that relevant licensing authorities should be made responsible authorities under the Licensing Act (or given equivalent powers). This would empower them to refuse, remove or review licences themselves without first having had to have received a representation from other responsible authorities. This would be a transfer of an existing power to local authorities.
 - In addition it is proposed that the Act is amended to enable licensing authorities to refuse and remove licences if it was considered 'beneficial' for the promotion of the licensing objectives in their local area. This will reduce the burden of proof required to refuse or remove a licence. Currently such a representation must be shown to be 'necessary' for the promotion of the licensing objectives and cannot be made, for example, because local residents decide they do not want yet more licensed premises opening in a particular area.
 - Reviews of a premises licence can be applied for by either responsible authorities or interested parties under the Licensing Act. Following the hearing, the licensing authority can take a number of actions including modifying the licence conditions, removing the Designated Premises Supervisor and suspending the licence for a period of up to 3 months. However the decisions

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

- When determining an application for a premises licence, an application for a licence review or the granting of a personal licence, the licensing authority must have regard to relevant representations or objection notices (in the case of personal licence applications) from the chief officer of police. The consultation proposes to strengthen the weight that licensing authorities must give to police representations (including those voiced by the police at a hearing) and objection notices by amending the legislation to require licensing authorities to accept all representations and notices and adopt all recommendations from the police, unless there is clear evidence that these are not relevant.
- Licensing authorities currently have to produce and publish a statement of licensing policy for each three year period, which they have to have regard to when making a determination on a licence application. In producing this statement, the Licensing Act states that the authority must consult the chief police officer for the area, the fire authority and such persons as the authority considers representative of holders of premises licences, club premises certificates, personal licences and local residents and businesses. In reality, some licensing authorities do not consult widely and practitioners have stated that as a result, licensing statements can be too narrowly defined and not representative of the views and needs of the local community. To overcome this, we propose to revise the statutory guidance to encourage licensing authorities to consult more widely when determining their licensing policy statement, without prescribing from the Centre the parties they must consult with. To support licensing authorities in doing this, simple templates for self-assessment (e.g. those used successfully for the Purple Flag scheme) should be provided within the guidance.
- Currently, the determination of licensing decisions gives little consideration to the views of local health bodies (Primary Care Trusts or equivalents) as they are not included as responsible authorities within the Licensing Act. This means that they are unable to make representations to the local licensing authorities regarding concerns about the impact of new licensed premises on NHS resources. We are consulting on designating health bodies as a responsible authority under the Act to enable them to make representations about the impact of new or existing licensed premises on the local NHS or more generally the safety of the public within the night-time economy. The expectation is that such representations would be based on analysis of the types of data already used to identify problematic premises and local violence hot-spots (e.g. alcohol related A&E attendances or emergency response statistics), which will reinforce the Coalition Agreement commitment to roll-out A&E data sharing.
- Additionally, preventing harm to the health of the public is not currently a licensing objective. We are also consulting on including health issues as a fifth licensing objective. This might result in, for example, licensing authorities requiring premises to display sensible drinking messages or promote low or non-alcoholic drinks.

Dealing with problems of Late Night Drinking

Policy 1 - Enable licensing authorities to have flexibility in restricting or extending opening hours to reflect community concerns or preferences

18. The Crime and Security Act 2010 has an uncommenced power to allow licensing authorities to make Early Morning Restriction Orders (EMROs) which restrict the sale of alcohol between 3am and 6am, if it is considered necessary by the licensing authority for the promotion of the licensing objectives. The aim of EMROs is to provide licensing authorities with an additional tool to use to promote the licensing objectives in their local area, by restricting alcohol sales between certain times. The proposal would commence this power with a significant amendment to allow local councils to decide between which hours (e.g. from midnight to 6am) they would like to prevent premises from opening, according to what they believe to be most appropriate for their local area. This differs from the

current situation which limits local councils to issuing the order only between the hours of 3am and 6am. The change would ensure that licensing authorities are given the freedom to respond to the needs of their local community in determining when premises can sell alcohol.

Policy j – Repeal the unpopular Alcohol Disorder Zone power and allow licensing authorities to use a simple adjustment to the existing fee system to pay for additional policing needed during late-night opening

19. Alcohol Disorder Zones (ADZs) were introduced via the Violent Crime Reduction Act 2006. They permit local authorities (with the consent of the police) to designate areas where there are problems with alcohol-related nuisance, crime and disorder as ADZs. In theory ADZs allowed councils to charge a levy on problem premises.
20. However, since the regulations for ADZs came into force in June 2008 no local authorities have chosen to establish one in their area. We have received feedback on this from local authorities that indicates that this is due to the lengthy and costly process involved in setting up an ADZ, along with the negative impact creating an ADZ might have on an area's image.
21. Local Authorities have shown by not setting up any ADZs that they do not feel this policy is a suitable tool for tackling alcohol related crime. Accordingly the Government intends to repeal the legislation enabling ADZs.
22. The policy intention behind ADZs will be met more effectively through the new Late Night Levy. This policy proposal would enable Licensing Authorities to charge late opening premises a levy to help pay for the cost of policing the local night-time economy, where this is deemed necessary.
23. It is intended that the levy would be introduced as an additional charge for Licensed Premises that Local Authorities have the discretion to introduce. This would apply to premises that have a licence to open beyond the time that the local authority deems appropriate (e.g. all premises that open after midnight on any day of the week).

Policy k – Substantial overhaul of the system of Temporary Event Notices to give the police more time to object, enable all responsible authorities to object, increase the notification period and reduce the number that can be applied for by personal licence holders.

24. A temporary event notice (TEN) is a notification to the licensing authority that an individual or premises intends to conduct licensable activities on a temporary basis for a period not exceeding 96 hours.
25. This proposal would make a number of changes to TENs to improve their effectiveness and ensure that events held using TENs are properly regulated.

These are:

- making sure existing licensing conditions apply when the applicant is already a licensed premises;
- extending the period of time that the police have to object (from 48 hours);
- extending the right to object to other responsible authorities under the Act including the right to object under the three other licensing objectives.
- increasing the period of notice given to a licensing authority in advance of the event. Currently this is 10 working days, but this could be increased to take account of the fact that extending the time that the police have to object to a TEN will impact upon the licensing authority's ability to schedule a hearing in advance of the event to consider the objection.
- amending the legislation to address the issue of the number of TENs in a single vicinity.

Protecting Children from the harm of alcohol

Policy l – introduce tougher sentences for persistent underage sales

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

Policy m – Trigger automatic sentences for persistent underage sales

28. This proposal is to amend the legislation to ensure that all premises found to be persistently selling alcohol to children have their licence reviewed, regardless of whether they have opted for voluntary closure or to face prosecution in court. At the review process the licensing authority has the power to impose a 3 month licence suspension, impose further conditions on the licence or revoke the licence. Making licence reviews automatic gives licensing authorities the power to consider each case and if seen to be necessary, the power to make a decision to revoke the licence.

Policy n – Ban the sale of alcohol below cost price

29. There has been a growing concern over the last few years about how cheaply some alcoholic drinks are being sold. We are also aware of the public's unease and their perception of heavily discounted alcohol being a key contributory factor to unacceptable levels of alcohol-related crime and disorder - in many cases as a result of "pre-loading" in preparation for a night out.
30. Over a quarter of local residents perceive drunk and rowdy behaviour to be a problem in their area. There is a belief that most of the alcohol which contributes to this drunk and rowdy behaviour is irresponsibly priced and sold, allowing irresponsible drinkers to be able to get drunk cheaply. Examples of deals such as bottles of cider containing more than the weekly recommended unit guidelines but costing less than the price of a pint of beer in an average pub continue to contribute to calls for action by Government. Victims of crime and anti-social behaviour, as well as senior figures from the enforcement and health sectors that have first-hand experience of tackling the harms caused by excessive and irresponsible consumption, have long called on the Government to take firm action to tackle cheap sales of alcohol.
31. The government is committed to ensuring that local people are able to enjoy all parts of their community without feeling intimidated by those who have drunk too much alcohol and to reducing the burden on frontline services of dealing with drunken behaviour. As set out in the Coalition Agreement, the government is carrying out a review of alcohol pricing and taxation and associated with this a ban on the sale of alcohol below cost. The responses to the consultation will inform the review. For more information go to: http://www.hm-treasury.gov.uk/alcohol_taxation.htm
32. The definition of 'cost' has implications for the policy, powers required, enforcement and different incentives. The 'cost' of an alcoholic product differs between retail businesses as they negotiate their own prices with suppliers, have different internal cost structures and may base overall profitability on a basket of goods. This can make it difficult for a retailer to prove, or an enforcement authority to check, whether a product has been sold 'below cost'.
33. There are a number of ways in which such a ban might work, and Government must find an approach which is compatible with EU trade and competition laws and realistic to enforce. Most EU countries who have tried similar policies have banned selling below 'net invoice price' where the reference price is broadly the unit price on the invoice.

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

Policy o – Enable local authorities to increase licensing fees so that they are based on full cost recovery

35. Licence fees have not been increased since their introduction and therefore some sort of increase is long overdue. This would be hugely welcomed by local authorities who have long argued that their enforcement costs exceed their fee income. The government commissioned Elton report in 2006 concluded that there was a £43m shortfall for the three year period 2004/05 to 2006/07 and recommended an increase of 7% for the three year period 2007/08 to 2009/10. This has never happened and the Government therefore proposes to enable local authorities to increase the licence fees so that they are based of full cost recovery.
36. The Government also acknowledges that adopting a tougher licensing regime as outlined in these proposals may lead to an increase in the number of licence reviews conducted and a subsequent risk of increased burden on local licensing authorities. Any additional burdens on licensing authorities should also be reflected in local fees.

Policy p – Enable licensing authorities to revoke licenses due to non-payment of fees

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

Policy q – Consult on the impact of the Mandatory Code of Practice for Alcohol Retailers and whether the current conditions should be removed

38. In April 2010, the previous administration introduced a Mandatory Code of Practice for Alcohol Retailers, which was intended to be introduced in two stages. The first stage, which took place in April 2010, imposed conditions on licensed premises to:
- (a) Ban irresponsible promotions in the on-trade
 - (b) Ban dispensing alcohol directly into the mouths of customers
 - (c) Ensure that free tap water was available in all licensed premises in the on-trade
39. The legislation for the Mandatory Code for Alcohol Retailers contains two further conditions for licensed premises, which were originally envisioned to be introduced in October 2010. These conditions were to:
- (d) Ensure that all licensed premises (both on and off-trade) have an age verification policy in place
 - (e) Ensure that all premises are able to offer smaller servings of beer, wine and spirits.
40. The consultation asks for responses on whether or not the conditions contained within the Mandatory Code should be repealed.

E. Appraisal (Costs and Benefits)

Option 1 – Do nothing

Costs

41. Under Option 1, the existing costs and benefits prevail, as outlined below.

Table 1: Costs of alcohol to society

Body/ organisation	Annual Cost	Explanation of cost
Alcohol related crime (including costs to the victims of crime and to society)	£8bn to £13bn	This estimate takes into account the costs in anticipation of crime, the direct physical and emotional costs to victims, the value of lost output, and the costs to the health service and Criminal Justice System. It is estimated on the basis of attributable fractions calculated from the Offending, Crime and Justice Survey. ⁷
Licensing authority	£21.6m	This estimate is based on a sample of 48% of licensing authorities in 2007/08 ⁸ . The costs are net of the value of licensing fees collected as these are transfers
Trading standards and police enforcement costs	Unknown	The costs of enforcement including inspections and reviews of premises licences, test purchases, police prevention of sales of alcohol to under-age drinkers and dispersal of drunk and rowdy individuals or crowds. It is not possible to extract these costs from other costs associated with upholding the law relating to alcohol.
NHS ⁹	£2.7bn ¹⁰	Includes hospital inpatient and day visits (both wholly and partially attributable to alcohol), A&E costs, ambulance service costs, GP consultations and specialist treatment
Licensee (through compliance with licensing conditions) and Licensing fees	Admin costs of applying for licences: £83.9m Licensing fees: £48.8m	The administrative costs were estimated by DCMS using BIS's standard cost model. Licensing fees are estimated using the same survey of licensing authorities as above. There will also be additional compliance costs but it is not possible to estimate these as they will vary for each premises depending on the particular conditions imposed and the nature of those premises.
Total	£12bn - £18bn	

Benefits

42. The alcohol industry plays a significant part in the economy. It is estimated that the industry contributes around £29bn to the UK's Gross Domestic Product both directly and through multiplier effects. In total, it is estimated that 668,000 people are directly employed in the production and

⁷ See Impact Assessment for the enabling power for the Mandatory Code

⁸ The LGA/LACORS Licensing Fee Survey 2008, the results of which are published in *unfinished business: a state-of-play report on alcohol and the licensing act 2003*

⁹ Whilst health is not a licensing objective, the alcohol-related health costs are significant and are therefore still presented. See the Impact Assessment published alongside *Safe, Sensible, Social - consultation on further action* for further details of the calculations, available at:

http://www.dh.gov.uk/en/Consultations/Closedconsultations/DH_086412?IdcService=GET_FILE&dID=169372&Re ndition=Web

¹⁰ This figure includes all the cost to the NHS of those injuries that arise as a result of crime. There is therefore likely to be some double counting with the costs of crime estimate. Initial estimates suggest that between £600m and £1.5bn of the estimated costs of crime may be to the NHS. However, this is not comparable to the £2.7bn estimate of the total cost of alcohol to the NHS.

retailing of alcohol and including indirect and induced jobs, over 1.8m jobs in the UK economy are supported by the alcohol industry.¹¹

43. When drunk responsibly, alcohol can enhance social occasions and can have an important and positive role to play in society.¹² However, it has not been possible to quantify these additional social benefits.

Option 2 – To introduce the policies outlined in the consultation document

Policy Costs

Cost to the alcohol industry

Policies a-h - Giving more local powers to refuse and revoke licences

44. These policy proposals are concerned with empowering local authorities, the police and local people to tackle premises that are breaking the existing conditions of their alcohol licence, or from preventing businesses that are not beneficial to the local community from getting a licence. As such, it will not cause additional cost burdens to responsible businesses that sell within the terms imposed by their licence.
45. The policies that are proposed should not increase criminal justice costs as the changes proposed to the Licensing Act are not intended to bring more offenders to justice. Instead, they empower the local authorities to refuse applications and initiate reviews, both of which are done outside of the criminal justice system. Under the proposals in the consultation, appeals against these decisions would only be allowed on process grounds (i.e. in which the local authority did not follow due process) and they may be settled outside of the courts, therefore appeals in Magistrates Courts should not be increased.

Policy I - Enable licensing authorities to have flexibility in restricting or extending opening hours to reflect community concerns or preferences

46. Early Morning Restriction Orders (EMROs) are an existing piece of legislation introduced under the Crime and Security Act 2010. Accordingly the only costs that would be generated from the proposals in this consultation would be those that occurred above the costs generated by existing legislation. The proposal being consulted on would amend the existing legislation to give local authorities greater discretion in how they use it. As local authorities will decide whether to apply an EMRO and for what hours to apply it to, it is not possible to accurately estimate on a national level what further costs this amendment to EMROs will introduce.

Policy j – Repeal the unpopular Alcohol Disorder Zone power and allow licensing authorities to use a simple adjustment to the existing fee system to pay for additional policing needed during late-night opening.

47. When the Late Night Levy is introduced, this will provide an extra annual cost for premises that open late in an area which decides to introduce the levy.
48. The Late Night Levy will not be introduced nationwide, and local authorities will need to decide whether or not the levy is applied in their area. There is no central collection of data on how late premises stay open and how many premises nationwide open beyond certain times. Accordingly, it is not possible to give an accurate estimation of the likely costs for industry under this proposal.

¹¹ *The economic outlook for the UK drinks sector and the impact of the changes to excise duty and VAT announced in the 2008 Budget and Pre-Budget Report*, Oxford Economics, February 2009.

¹² See for example Peele S and Brodsky A. (2000). "Exploring psychological benefits associated with moderate alcohol use: A necessary corrective to assessments of drinking outcomes?". *Drug and Alcohol Dependence*, 60:221-247.

49. To give an illustration of the possible costs that could be imposed by this levy, different scenarios have been laid out below. NB – these are purely illustrative, given the difficulties with accurately calculating the possible costs that are laid out above.
50. It has not yet been determined how much will be charged under the Late Night Levy. To provide illustrative examples, we have here used two different possible levies. The current range values for the annual Licensing Fee is between £70 and £1905, and assuming that the levy charge is unlikely to be significantly more or significantly less than the current licence fee we have based the possible levies used for the calculations on this range. As such, we have used levies of £100 and £2000 to calculate the possible range of costs under the policy.
51. It will be at the discretion of local authorities as to whether they charge the levy or not. This makes it impossible to accurately estimate how many areas the levy will be charged in, and what type of areas will take up the levy.
52. In regards to what type of areas will take up the levy, we have used two different “types” of areas to calculate our illustrative examples: for smaller areas, with fewer premises that open late at night we have used an indicative figure of having an average of 50 late-night premises. For larger areas, with more premises that open late at night, we have used an indicative figure of having 200 premises that have a licence to open late on at least one day. Due to the lack of available data on how many late-opening premises there are within each area, these area “types” are illustrative estimations.
53. To provide an illustrative example of the number of areas that will take up the levy, we have a range of possible scenarios in terms of take-up:
- Scenario 1 – The Levy is taken up only by a few of the bigger, inner city areas. For this we have calculated the cost by estimating that 10 large areas take up the levy.
 - Scenario 2 – The levy is taken up by a majority of the bigger inner city areas, and many smaller areas as well. For this we have calculated the cost by estimating that 50 large areas take up the levy, as well as 100 small areas.
54. The total costs that would result under these different scenarios and different charges are laid out in the table below.

Table 2 – The range of costs under different scenarios and under different charges

	Charge of £100	Charge of £2000
Scenario 1	£400,000	£1,200,000
Scenario 2	£3,000,000	£9,000,000

55. Accordingly, under this illustrative example, the range of total annual costs to the industry under the late night levy is between £400,000 and £9,000,000. As this is purely illustrative and not based on reliable evidence it has not been included in the total costs.

Policy k - Substantial overhaul of the system of Temporary Event Notices to give the police more time to object, enable all responsible authorities to object, increase the notification period and reduce the number that can be applied for by personal licence holders.

56. Enabling all responsible authorities to object to a TEN will simply make an existing power more widespread in the local community, and as such will not add an extra cost to local businesses.
57. While giving the police more time to object and increasing the notification period required for applications for TENs will require applicants that are applying for a TEN to plan further ahead in advance, they will not add a substantial cost on to the process of applying for a TEN.
58. Reducing the number of TENs that can be applied for by personal licence holders to 12 could add a cost to any businesses that intended to hold more than that number of Temporary Events in a year.

However, as data is not held on how many businesses or individuals apply for more than 12 TENs in a year presently, and because events that use TENs vary significantly and therefore the average revenue raised by these events could not be calculated, it is not possible to provide a realistic estimate for what cost this would cause. As such, we are asking in the consultation what the impact would be of limiting the number of TENs that a personal licence holder can apply for to 12 a year, in order to collect information on whether this would have a significant impact on businesses.

59. This policy should not increase criminal justice costs as the changes proposed to TENs simply empower the local authorities to refuse applications, which is done outside of the criminal justice system. Under the proposals in the consultation appeals against these decisions would only be allowed on process grounds (i.e. in which the local authority did not follow due process) and they may be settled outside of the courts, therefore appeals in Magistrates Courts should not be increased.

Policy l – Introduce tougher sentences for persistent underage sales; AND

Policy m – Trigger automatic licence reviews following persistent underage sales

60. As no licensed premises should be selling alcohol to underage individuals, these policy proposals will not provide any additional costs for law-abiding businesses.

Policy n – Ban the Below Cost Sale of Alcohol

61. This policy is at an early stage of development and no firm proposals are being put forward in this consultation. It is not possible to calculate the possible costs of this policy ahead of a clear proposal for implementing the policy – as such, the costs of this policy have not been calculated here.
62. An Impact Assessment with the full cost of this policy will be published when a clearer idea of the policy structure is known.

Policy o – Enable local authorities to increase licensing fees so that they are based on full cost recovery

63. Increasing licence fees would create an extra financial burden for all licensed premises, both in the on-trade and the off-trade.
64. As we are proposing to allow local authorities to amend their own licensing fees to achieve full cost recovery, it is difficult to estimate how much the fee would need to rise by. However, the Elton Review of Licensing Fees (2006) recommended that in order to close the gap between the revenue of the licence fees and the costs associated with licensing, fee levels should increase for the three year period from 2007/08 by 7%. While this figure is likely to be at the bottom range of the rise needed as it was recommended in 2006 but not implemented, it provides a useful illustration of the possible costs that raising the licensing fee could cause for business.
65. The table below sets out the amount paid under the current licensing fee, the total number of premises paying those fees and the difference between what would be generated over a 10 year period with an annual 7% increase over the first three years, as opposed to a 10 year period where the fee levels remained at their current level.

Table 3 – Extra costs generated over a 10 year period after annually increasing the Licence Fee by 7% in the first three years ¹³

Current bandings & fees charged	Number of premises paying those fees	Fees charged after first 7% increase (Year One)	Fees charged after second 7% increase (Year Two)	Fees charged after third 7% increase (Year three-year ten)	Total current annual cost of licence fees to trade	Difference in cost to trade after 10 years of updated fees
Band A (£70)	41131	£75	£80	£86	£2,879,170	£5,802,200
Band B (£180)	91637	£193	£206	£221	£16,494,660	£33,240,800
Band C (£295)	21335	£316	£338	£361	£6,293,825	£12,683,600
Band D (£320)	4732	£342	£366	£392	£1,514,240	£3,051,600
Band E (£350)	11395	£375	£401	£429	£3,988,250	£8,037,300
Band D with multiplier (£640)	607	£685	£733	£784	£388,480	£782,900
Band E with multiplier (£1050)	714	£1,124	£1,202	£1,286	£749,700	£1,510,800
Total					£32,308,325	£65,109,200

66. According to these calculations the increase in cost to business after 10 years of increased fees, following annual increases to the licence fee of 7% in the first three years, would be £65,109,200, or £6.5m a year average, when compared to how much they would pay at the current licence fee levels. It should be noted that the cost of this measure would be paid to the licensing authority, and as such would be cancelled out by the benefit provided.

Policy p – enable licensing authorities to revoke licenses due to non-payment of fees

67. As it is a requirement for all licensed premises to pay their licence fee, this policy proposal will not provide any additional costs for law-abiding businesses.

68. This policy should not increase criminal justice costs as the changes proposed simply empower the local authority to revoke a licence on non-payment which would be done outside of the criminal justice system. Under the proposals in the consultation appeals against these decisions would only be allowed on process grounds (i.e. in which the local authority did not follow due process) and they may be settled outside of the courts, therefore appeals in Magistrates' Courts should not be increased.

Policy q – Consult on the impact of the Mandatory Code of Practice for Alcohol Retail and whether the current conditions should be removed

69. As this policy relates to removing existing legislation, it should not impose any extra costs on business or enforcement agencies.

TOTAL COSTS

Over 10 years - £65,109,200

Policy Benefits

70. The aim of the proposals is to reduce alcohol related crime and disorder and public nuisance.

¹³ Source of data on number of licenses under each band:
http://webarchive.nationalarchives.gov.uk/+/http://www.culture.gov.uk/images/research/Number_of_Premises_Licences_Club_Premises_Certificates_and_Personal_Licences_by_fee_band.xls

Benefits of the proposed policies

Policy n – Enable local authorities to increase licensing fees so that they are based on full cost recovery

71. As noted above, the main additional cost which accompanies the policies in the consultation is linked to the rise in the licence fees. As the revenue raised from the licence fee goes directly back to licensing authorities, the costs associated with this policy are cancelled out by the benefits it provides for local authorities. Therefore, it should be counted as providing a benefit of £65,109,200 over ten years, or £6,510,920 average.

Policy p - Consult on the impact of the Mandatory Code of Practice for Alcohol Retail and whether the current conditions should be removed

72. The consultation also asks for opinions on whether or not the Mandatory Code for Alcohol Retailers should be repealed. The Mandatory Code is a piece of legislation that is partially commenced, with the second half due to come in at the beginning of October 2010. By repealing the mandatory code, the annual costs that would have been come into force had the policy been implemented would be saved.

73. As can be seen in the table below, the savings relate mainly to the age verification condition as we have assumed that the transitional costs associated with the smaller measures condition (and all the other conditions) have been incurred by most affected businesses.

Table 4 – Total annual recurring costs of the Mandatory Code¹⁴

Mandatory conditions and requirements		Total recurring annual costs
1	Restrictions on on-trade promotions	£200,000
2	Prevent dispensing into the mouth	£0
3	Age verification policy/system	£37,240,000
4	Smaller measures – ½ pint beer	£0
	- 125ml wine	£0
	- 25ml or 35ml spirits	£0
5	Free tap water	£1,720,000
Total (may not sum due to rounding)		£39,160,000

74. Therefore, if the Mandatory Code for Alcohol Retailers is repealed, it will provide an annual benefit of £39,160,000, or £391,600,000 over 10 years.

All policies

75. The proposed policies will help to ensure that local authorities and the police are empowered to reduce alcohol related crime. The likely benefit of each individual policy is likely to be less than the benefit of imposing all the policies as a comprehensive package to reduce alcohol related crime. Hence, this Impact Assessment will consider the expected benefits of all the other proposed policies together.

76. However, due to the inherently random nature of crime, particularly alcohol related crime, and a lack of data around the nature of alcohol consumption as opposed to simply the amounts being consumed, it is not possible to quantify the expected benefits of many of the proposed policies. However, it is possible to estimate the impact that the proposed policies would need to have on

¹⁴ Impact Assessment for the Mandatory Code for Alcohol Retailers 2010

crime and disorder in order to justify the cost identified above. Aside from the increase in licence fees (which is covered above) the only policy which we have illustrative costs for is the Late Night Levy. While our costs on this are only illustrative, they can be used to demonstrate how small the impact would be that our policies would need to have on alcohol related crime in order to cover the costs.

Table 4: Reduction in violent offences (excluding robbery) needed to justify the illustrative cost of the Late Night Levy¹⁵:

					Offences needed to be prevented (proportion of current alcohol related offences) to save:
Total cost of the proposed policies in year one	Total offences in 2008/9 (BCS)	Proportion which is alcohol related (BCS)	Total offences which are alcohol related	Average social cost of one crime	Year one
£400,000	1.843m	50.4%	929,628	£5,500	73 (0.008%)
£9,000,000	1.843m	50.4%	929,628	£5,500	1636 (0.2%)

77. Table 4 shows that the benefits of introducing the policy on the Late Night Levy would justify the illustrative costs of implementation if it reduced alcohol-related violence by either 0.008% or 0.2%. Given the extremely low reductions that these represent, we are confident that this would be the case.

TOTAL BENEFITS

Over 10 years –

Licensing Fee - £65,109,200
Mandatory Code - £391,600,000
Total - £456,709,200

F. Risks

Option 2 – Introduce the measures laid out in the consultation

Risk – The proposals put a heavy bureaucratic burden on businesses and on enforcement agencies, which discourages their take-up

Mitigation – We have already held initial meetings with stakeholders from both licensing authorities and the police to discuss the measures, and through carrying out this public consultation are seeking the views of these agencies in order to ensure that any measures introduced do not create such a burden.

Risk – The proposals have an unintended impact on responsible premises that are not the cause of alcohol related crime.

Mitigation – We have already met with representatives from the on-trade and the off-trade as well as manufacturers to discuss the likely impact the proposed measures would have on their businesses. We will continue to seek the views of these parties throughout the consultation to

¹⁵ All violence includes wounding (both more and less serious), assault with minor injury and assault without injury. The average unit cost for all violence is an amalgamation of the unit costs for the different types of violent crime. The percentages are percentages of alcohol-related crime, not total offences.

ensure that the policies have as small as possible an impact on responsible businesses while having a strong impact on those premises that sell alcohol irresponsibly.

G. Enforcement

Enforcement Costs

78. We do not expect that these proposed policies will require any significant increase in enforcement activity or impose any significant additional costs on licensing authorities. There may be some costs caused by having to ensure that the Late Night Levy system is being maintained, which may lead to more enforcement activity taking place. However, these costs will be met with the revenue raised under the levy, and will also be far outweighed in the long term by the savings that local authorities will benefit from a result of being able to use the above powers to cut down on alcohol related crime.

H. Summary and Recommendations

The table below outlines the costs and benefits of the proposed changes.

Option	Costs	Benefits
2	£6.5m/year (avg. over 10 years)	£45.6m/year (avg. over 10 years)
	Cost to alcohol industry	Benefits to local authorities and alcohol industry
Source:		

Our preferred option is option 2, due to the minor reductions in alcohol related crime (which we are confident will be achieved) that would be needed to justify the associated costs, and the significant benefits it would contain for both local authorities and the alcohol industry.

J. Monitoring and Evaluation

The impact of the order will be subject to internal review based on feedback from local authorities and police after 12 months and the legislation may be amended accordingly.

K. Feedback

Feedback from those affected by the policy is currently being sought through carrying out a public consultation.

Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added to provide further information about non-monetary costs and benefits from Specific Impact Tests, if relevant to an overall understanding of policy options.

Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their actual costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

<p>Basis of the review: [The basis of the review could be statutory (forming part of the legislation), it could be to review existing policy or there could be a political commitment to review];</p>
<p>Review objective: [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]</p>
<p>Review approach and rationale: [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]</p>
<p>Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured]</p>
<p>Success criteria: [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]</p>
<p>Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection systematic collection of monitoring information for future policy review]</p>
<p>Reasons for not planning a PIR: [If there is no plan to do a PIR please provide reasons here] As we are only at consultation stage it is not yet possible to plan for a post-implementation review.</p>

Annex 2. Specific Impact Tests

Small Firms Impact Test

1. In developing the content of the consultation we have been particularly mindful of the potential impact on small firms and will ensure that we fully engage them over the consultation period.

Industry structure

2. The figures in Table A1 suggest that based on the number of employees, approximately three quarters of all alcohol retailers are small businesses.

Table A1: Number of small businesses selling alcohol in England and Wales, March 2008¹⁶

Type of retailer (SIC 2003 ¹⁷)	Estimated number of enterprises in England and Wales (and proportion of all licensed premises) with:	
	Less than 20 employees	Less than 50 employees
Retail sale in non-specialised stores with food, beverages or tobacco predominating (5211)	25,110	25,552
Retail sale of alcoholic and other beverages (5225)	5,088	5,121
Off trade	30,198 (64%)	30,673 (65%)
Hotels (5510)	6,102	7,345
Restaurants (5530)	52,770	54,823
Bars (5540)	43,473	45,379
On trade	102,346 (77%)	107,547 (81%)
All alcohol retailers	132,544 (74%)	138,220 (77%)

Will the proposals in the consultation affect small businesses?

3. Some of the proposals contained within the consultation will affect all types of licensed premises, including those which qualify as small businesses. In particular the following policies are all likely to have an impact on small businesses:
 - i) Enable licensing authorities to have flexibility in restricting or extending opening hours to reflect community concerns or preferences.
 - j) Repeal the unpopular power to establish Alcohol Disorder Zones and allow licensing authorities to use a simple adjustment to the existing fee system to pay for any additional policing needed during late-night opening.
 - k) Substantial overhaul of the system of Temporary Event Notices to give the police more time to object, enable all responsible authorities to object, increase the notification period and reduce the number that can be applied for by personal licence holders.
 - l) Introduce tougher sentences for persistent underage sales.
 - m) Trigger automatic licence reviews following persistent underage sales.
 - n) Ban the sale of alcohol below cost price.
 - o) Enable local authorities to increase licensing fees so that they are based on full cost recovery.
4. It is worth noting, however, that option (n) which would ban below cost selling of alcohol is not expected to have a major impact on small businesses, as it is not believed that they frequently engage in the practice of selling alcohol below cost price.

¹⁶ This table is based on data from *UK Business: Activity, Size and Location – 2008* which contains data from a snapshot of the Inter Departmental Business Register (IDBR) taken on 21 March 2008. Table B3.1 provides a breakdown of the number of enterprises in the UK by SIC and number of employees and those figures have been scaled down to estimate the number of small enterprises in England and Wales using the figures in Table B3.4, which breaks down the number of enterprises in the UK by SIC and Government Office Region.

¹⁷ Standard Industrial Classification of Economic Activities 2004

5. It should also be noted that under the voluntary closure option in policy (l) local authorities will be encouraged to use this option proportionately, and to take into account the size of the firm affected. Therefore, smaller firms should face less of a burden under this option than larger firms.

Exemptions for small businesses

6. One of the aims of the proposed changes is to empower local communities to tackle those businesses, both small and large, that are contributing to alcohol related crime in their area. Exempting small businesses could jeopardise this aim because it is likely that there are a number of small businesses who are selling alcohol irresponsibly and therefore who should face the same measures as their larger counterparts. We therefore do not consider it appropriate to exempt small businesses from the proposals in the consultation.

Alternative approaches to exemptions which could reduce burdens on small firms

Issue statutory guidance

7. Under Section 182 of the Licensing Act 2003, the Secretary of State must issue guidance to licensing authorities and they must have regard to that guidance when carrying out all of their licensing functions. We will therefore be issuing guidance to licensing authorities on any of the proposals that are legislated on to ensure that licensing authorities do use their new powers appropriately and in a proportionate and targeted manner.

Estimated cost to small firms

8. The costs of implementing the proposals in the consultation are calculated in the Impact Assessment. The only costs which have been given a monetary value are the rises in the licensing fees, which will affect premises differently according to the business' rateable value. As there is no data available on how small businesses are divided between the different categories of rateable value, it is not possible to differentiate the total cost to small businesses from the total cost to the industry as a whole.
9. However, as fees are calculated based on rateable value the licence fee structure charges less to those businesses with less valuable property. Because one of the factors that affects the value of a premises is its size, it is likely that many small businesses will occupy premises with a lower rateable value. Accordingly it is likely that smaller businesses will face a less significant burden from the rise in licence fees than larger businesses. However, it should be noted that other factors, in particular location, also have a significant impact on rateable value, so that some smaller businesses located in valuable premises are likely to qualify for higher fees.

Consultation with small firms

10. In developing these conditions prior to the consultation, Government officials have held discussions with a range of key industry stakeholders who represent small businesses. These included the Association of Licensed Multiple Retail, the Association of Convenience Stores, the British Retail Consortium and the Federation of Wholesale Distributors.
11. Many of the issues raised in the pre-consultation meetings regarding small businesses were focused on the introduction of the Late Night Levy, including the following:
 - It was pointed out that some small businesses may want to change their opening hours to avoid paying the Late Night Levy, and that this opportunity should be made available to them. The Home Office agreed to take this into consideration when finalising the details of the policy.
 - Some representatives also wanted to see the charge under the Late Night Levy varied according to the size of the business. A question on reductions and exemptions under this policy is included in the consultation document.
12. During the consultation we will actively seek the views of small firms in particular to the policies that we have identified above as having an impact on small businesses, and we will ensure that we consult with the relevant trade bodies for small businesses.

Annex 3. Policies being consulted on for option two

The Government intends to introduce more flexibility into the current licensing regime to allow local authorities and the police, to clamp down on alcohol-related crime and disorder hot spots within local night-time economies. To rebalance the licensing regime the Government is proposing the following measures:

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