

Licensing Committee

Grand Jury Room, Town Hall
6 October 2010 at 7.00pm

null

Information for Members of the Public

Access to information and meetings

You have the right to attend all meetings of the Council, its Committees and Cabinet. You also have the right to see the agenda, which is usually published 5 working days before the meeting, and minutes once they are published. Dates of the meetings are available at www.colchester.gov.uk or from Democratic Services.

Have Your Say!

The Council values contributions from members of the public. Under the Council's Have Your Say! policy you can ask questions or express a view to meetings, with the exception of Standards Committee meetings. If you wish to speak at a meeting or wish to find out more, please pick up the leaflet called "Have Your Say" at Council offices and at www.colchester.gov.uk

Private Sessions

Occasionally meetings will need to discuss issues in private. This can only happen on a limited range of issues, which are set by law. When a committee does so, you will be asked to leave the meeting.

Mobile phones, pagers, cameras, audio recorders

Please ensure that all mobile phones and pagers are turned off before the meeting begins and note that photography or audio recording is not permitted.

Access

There is wheelchair access to the Town Hall from St Runwald Street. There is an induction loop in all the meeting rooms. If you need help with reading or understanding this document please take it to Angel Court Council offices, High Street, Colchester or telephone (01206) 282222 or textphone 18001 followed by the full number that you wish to call and we will try to provide a reading service, translation or other formats you may need.

Facilities

Toilets with lift access, if required, are located on each floor of the Town Hall. A vending machine selling hot and cold drinks is located on the first floor and ground floor.

Evacuation Procedures

Evacuate the building using the nearest available exit. Make your way to the assembly area in the car park in St Runwald Street behind the Town Hall. Do not re-enter the building until the Town Hall staff advise you that it is safe to do so.

Colchester Borough Council, Angel Court, High Street, Colchester
telephone (01206) 282222 or textphone 18001 followed by the full number you wish
to call

e-mail: democratic.services@colchester.gov.uk

www.colchester.gov.uk

**COLCHESTER BOROUGH COUNCIL
LICENSING COMMITTEE
6 October 2010 at 7:00pm**

Members

Chairman : Councillor Barrie Cook.
Deputy Chairman : Councillor Nick Cope.
Councillors Mary Blandon, John Bouckley, Mark Cory,
Wyn Foster, Christopher Garnett, Dave Harris, Mike Hogg,
Margaret Kimberley, Michael Lilley and Ann Quarrie.

Substitute Members :

Agenda - Part A
(open to the public including the media)

Members of the public may wish to note that Agenda items 1 to 5 are normally brief.

Pages

1. Welcome and Announcements

(a) The Chairman to welcome members of the public and Councillors and to remind all speakers of the requirement for microphones to be used at all times.

(b) At the Chairman's discretion, to announce information on:

- action in the event of an emergency;
- mobile phones switched off or to silent;
- location of toilets;
- introduction of members of the meeting.

2. Substitutions

Members may arrange for a substitute councillor to attend a meeting on their behalf, subject to prior notice being given. The attendance of substitute councillors must be recorded.

3. Urgent Items

To announce any items not on the agenda which the Chairman has agreed to consider because they are urgent and to give reasons for the urgency.

4. Have Your Say!

(a) The Chairman to invite members of the public to indicate if they wish to speak or present a petition at this meeting – either on an item

on the agenda or on a general matter not on this agenda. You should indicate your wish to speak at this point if your name has not been noted by Council staff.

(b) The Chairman to invite contributions from members of the public who wish to Have Your Say! on a general matter not on this agenda.

5. Declarations of Interest

The Chairman to invite Councillors to declare individually any personal interests they may have in the items on the agenda.

If the personal interest arises because of a Councillor's membership of or position of control or management on:

- any body to which the Councillor has been appointed or nominated by the Council; or
- another public body

then the interest need only be declared if the Councillor intends to speak on that item.

If a Councillor declares a personal interest they must also consider whether they have a prejudicial interest. If they have a prejudicial interest they must leave the room for that item.

If a Councillor wishes to make representations on an item on which they have a prejudicial interest they may do so if members of the public are allowed to make representations. In such circumstances a Councillor must leave the room immediately once they have finished speaking.

An interest is considered to be prejudicial if a member of the public with knowledge of the relevant facts would reasonably regard it as so significant that it is likely to prejudice the Councillor's judgement of the public interest.

Councillors should consult paragraph 7 of the Meetings General Procedure Rules for further guidance.

6. Licensing of Sexual Entertainment Venues (Sex Establishment Licence). 1 - 47

See report by the Head of Environmental and Protective Services.

7. Council's Response to Home Office consultation document – "Rebalancing the Licensing Act". 48 - 113

See report by the Head of Environmental and Protective Services.

8. Exclusion of the public

In accordance with Section 100A(4) of the Local Government Act 1972 and in accordance with The Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 (as amended) to exclude the public, including the press, from the meeting so that any items containing exempt information (for example confidential personal, financial or legal advice), in Part B of this agenda (printed on yellow paper) can be decided. (Exempt information is defined in Section 100I and Schedule 12A of the Local Government Act 1972).



Licensing Committee

Item

6

6 October 2010

Report of	Head of Environmental & Protective Services	Author	Simon Harvey ☎ 282701
Title	Licensing of Sexual Entertainment Venues (Sex Establishment Licence).		
Wards affected	All		

This report concerns the adoption of Section 27 of the Policing & Crime Act 2009 by Colchester Borough Council to allow sexual entertainment venues to be licensed and regulated under amendments made to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982.

1. Decision Required

- 1.1 To recommend to full Council that it resolves to adopt the amendments made to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as introduced by Section 27 of the Policing & Crime Act 2009 and that the amendments shall apply within the Borough of Colchester and come into force not more than one month after the day on which the resolution was passed.
- 1.2 Determine whether or not it wishes its officers to formulate a licensing policy in respect of how applications for sex establishment licences (sexual entertainment venues, sex shops and sex cinemas) will be considered by the Council in accordance with Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 and give guidance to officers as to what matters it would like to be included and considered in such a policy.
- 1.3 Instruct officers to prepare a report and draft policy back to the Licensing Committee in order that the draft policy can be discussed and amended as appropriate by the Committee, prior to it being subject to public consultation and scrutiny.

2. Reasons for Decision

- 2.1 Section 27 of the Policing & Crime Act 2009 amends Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 to allow a Local Authority to grant a Sex Establishment Licence to a 'Sexual Entertainment Venue' where 'relevant entertainment' is being provided before a live audience for the financial gain of the organiser or the entertainer.
- 2.2 If Colchester Borough Council wishes to adopt the new amendments introduced by Section 27 of the Policing & Crime Act 2009 the Licensing Committee will need to formally recommend to the full Council that it passes a resolution confirming that the amendments made to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 by Section 27 shall be applied in the Borough and will come into force on a specified day not earlier than one month before the day on which the resolution was passed.

3. Alternative Options

- 3.1 Colchester Borough Council does not have to adopt the amendments to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as introduced by the provisions of Section 27 of the Policing & Crime Act 2009. The new provisions are discretionary not mandatory in that regard.
- 3.2 However if the Council were to decide not to adopt the amendments within one year of Section 27 coming into force, they must consult local people about whether or not it should make such a resolution.
- 3.3 For the purposes of this duty, 'local people' is defined as anyone who lives or works in the local authority area.

4. Supporting Information

- 4.1 The Committee may recall being asked to give their response to a Home Office consultation document at their meeting of the 25 November 2009 regarding the additional regulation of venues providing 'adult entertainment' such as lap dancing, pole dancing and striptease.
- 4.2 At the time of the Home Office consultation document such 'adult' entertainment could only be encompassed under the provisions of the Licensing Act 2003 which regulates the sale of alcohol and entertainment such as music and dancing or performance of dance for example. This would remain the case if the Council decided not to adopt the new provisions of Section 27 of the Policing & Crime Act 2009.
- 4.3 Under the Licensing Act 2003, the Licensing Authority can only consider representations to a premises licence application which directly relate to how the proposed activities will either undermine or promote the four licensing objectives in the vicinity of the premises, regardless of whether the entertainment sought by the application is for what might be considered as 'adult' entertainment'. These objectives are:
 - The Prevention of Crime and Disorder,
 - Public Safety,
 - The Prevention of Public Nuisance, and
 - The Protection of Children from Harm.
- 4.4 Refusal of an application is also restricted to much narrower criteria under the Licensing Act 2003 and once again must relate to the negative impact that an application might make on one or more of the four licensing objectives if it is granted
- 4.5 Section 27 of the Policing & Crime Act 2009 which came into force on the 6 April 2010 allows for representations to be made on a much wider basis by local people for example and gives Local Authorities under paragraph 12(3) of the Local Government (Miscellaneous Provisions) Act 1982 the flexibility of additional powers or measures to refuse to grant or renew an application for a sexual entertainment venue if it wished to do so. These are:
 - (a) That the applicant is unsuitable to hold the licence, by reason of having been convicted of an offence or for any other reason;
 - (b) That if the licence were to be granted, renewed or transferred, the business to which it refers would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant, renewal or transfer of such a licence if he had made the application himself;

(c) That the number of Sex Establishments in the relevant locality at the time the application is made is equal to or exceeds the number, which the authority considers appropriate for that locality;

(d) That the grant or renewal of the licence would be inappropriate having regard;

i) to the character of the relevant locality

ii) to the use to which any premises in the locality are put or

iii) to the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.

4.6 Paragraph 12 (4) of the Local Government (Miscellaneous Provisions) Act 1982 also allows a Local Authority to determine that it might be inappropriate to have any Sex Establishments at all in a given relevant locality, or to determine a set number of licences that it will grant in a particular locality for example.

4.7 Relevant terms, restrictions or conditions can also be added to any grant of a Sex Establishment Licence for a specific sexual entertainment venue.

4.8 The meaning of a sexual entertainment venue is set out under Paragraph 2A of the Local Government (Miscellaneous Provisions) Act 1982 as inserted by Section 27 of the Policing & Crime Act 2009 as any premises at which 'relevant entertainment' is provided before a live audience for the financial gain of the organiser or the entertainer. The organiser means any person who is responsible for the organisation or management of the relevant entertainment or the premises at which the relevant entertainment is provided. In most circumstances this is likely to be the manager of the premises.

4.9 Relevant entertainment is defined as any live performance or live display of nudity which is of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of an audience (whether by verbal or other means). An audience can consist of just one person, for example where the entertainment might take place in a private booth. The guidance also defines what constitutes male and female nudity.

4.10 Each application must be judged in its own right and on its own merits but the Home Office Guidance expects that the definition of relevant entertainment would apply to the following forms of adult entertainment. These are:

- lap dancing
- pole dancing
- table dancing
- strip shows
- peep shows
- live sex shows

4.11 The new legislation does not encompass a display of nudity which may form part of a legitimate drama or performance of dance that may take place as part of a theatre production for example.

4.12 It is therefore clear that the aim of the new legislation is to bring the licensing of sex entertainment venues in line with other 'sex establishments' such as 'sex shops' and 'sex cinemas' and to recognise that local people may have concerns about where such premises are located and will want to play an active part in any debate and decision

made over the grant of a licence for such a venue. Sex shops and sex cinemas will still continue to be separately licensed in their own right under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982.

- 4.13 However the amendments introduced in the Policing and Crime Act 2009 will not require premises to hold a sex establishment licence where the premises has held events involving relevant entertainment on 11 occasions only within the last 12 months with at least one month between each event and where no such event has lasted more than 24 hours. Neither will a spontaneous display of nudity be regarded as relevant entertainment if there is no financial gain to the organiser or entertainer.
- 4.14 Premises that will be required to apply for and hold a sex establishment licence in order to operate as a sexual entertainment venue to provide 'relevant entertainment' such as lap dancing or pole dancing at their venue, will also still need to hold a premises licence or a Temporary Event Notice granted under the Licensing Act 2003 to be able to sell alcohol or provide any other licensable activities which are not covered under the definition of 'relevant entertainment'. Live music or recorded music which is integral to the provision of relevant entertainment such as lap or pole dancing is excluded from the definition of regulated entertainment under the Licensing Act 2003 however.
- 4.15 There is no prescribed application form for a sex establishment licence under the amendments to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 and if the Council resolves to adopt the amended provisions of this Act as introduced by Section 27 of the Policing & Crime Act 2009 it will need to create an appropriate application form to include such details and information as the authority may reasonably require in addition to the applicants name an address for example.
- 4.16 There is no prescribed fee for a sex establishment licence (sexual entertainment venue) set out in Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 and the Council will therefore need to set its own reasonable level of fee for the grant, renewal, variation or transfer of a sex establishment licence in accordance with the European Services Directive: Guidance for Local Authorities and LACORS Guidance on the impact of the Services Directive on Councils setting and administering local licence fees within the service sector. Fees should be cost neutral however and set to cover the reasonable cost of administration and enforcement.
- 4.17 Sex establishment licences (sexual entertainment venue licences) can be granted for up to one year.
- 4.18 At this present moment in time, there is only one venue in the Borough that is licensed under the Licensing Act 2003 which is regularly providing lap dancing or entertainment that will be regarded as relevant entertainment on more than 11 occasions in a 12 month period under the new provisions as introduced by the Policing & Crime Act 2009.
- 4.19 It is believed however that at the time that their original applications were submitted under the Licensing Act 2003, there were other premises that indicated that they would or could be providing 'adult entertainment' and that there have been premises in Colchester that have provided such entertainment, but it is not known whether they have done so with the frequency that would require them to hold a sex establishment licence, i.e. on more than 11 occasions in a 12 month period.
- 4.20 Colchester Borough Council adopted Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 in the nineteen eighties in order to be able to licence sex shops and sex cinemas in its area and so will need only to resolve to adopt

the provisions made by Section 27 of the Policing & Crime Act to amend Schedule 3. Such a resolution must be made by the full Council.

5. Transitional Arrangements - General

- 5.1 The provisions of Section 27 of the Policing & Crime Act 2009 came into force on the 6 April 2010. Councils have 12 months from that date in order to decide whether or not they wish to adopt those requirements to licence lap dancing and other similar relevant entertainment under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982. If Colchester Borough Council decides not to adopt the new provisions it has to carry out a public consultation with 'local people' as to whether or not it should adopt them.
- 5.2 Therefore the transitional period will last for 12-months beginning with the date that Colchester Borough Council passes a resolution that Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended by the Policing & Crime Act 2009) will come into force in their area and which will be known as 'the 1st appointed day'. Six months following the 1st appointed day will be known as the '2nd appointed day' and the day on which the transitional period ends will be known as the '3rd appointed day'.

6. Transitional Arrangements – Existing Operators

- 6.1 To give them time to comply with the new legislation and new licensing requirements, existing operators, who hold a premises licence under the Licensing Act 2003 immediately before the '1st appointed day' and use the premises as a sexual entertainment venue under that licence, (or are currently undertaking 'preparatory work' to use the venue for that purpose) will be allowed to continue to provide relevant entertainment (i.e. lap dancing and other similar entertainment) up until the 3rd appointed day, or the determination of any application they have submitted before that time, including any appeal against the refusal to grant a licence for example, or whichever is later.
- 6.2 'Preparatory work' in the context of the new licensing requirements under the Policing & Crime Act 2009 refers to tangible work carried out by an operator, such as a refurbishment or refit, in order that they can use the premises as a lap dancing club or similar venue in the future. The operator in question will have already been granted a premises licence under the Licensing Act 2003 before the 1st appointed day, but will not have used the premises as a sexual entertainment venue by that date. It would be beneficial and encouraged for any such prospective operator to make themselves known to the Council before the 1st appointed day or as soon after as it is practically possible for them to do so.

7. Transitional Arrangements – New Operators

- 7.1 New applicants are those who wish to operate a premises as a sexual entertainment venue after the 1st appointed day, but do not already have a Premises Licence or Club Premises Certificate to use it as such under the Licensing Act 2003, or do have such a licence but have not taken any steps towards operating the premises as a sexual entertainment venue. It is important for any such applicant to note that after the 1st appointed day, new applicants will not be able to operate as a sexual entertainment venue until they have been granted a sex establishment licence to operate as a sexual entertainment venue.

8. Application Procedure

- 8.1 Applicants will be able to submit their application from the 1st appointed day onwards (i.e. the day that the Council resolves that the new licensing requirements for lap dancing clubs and those providing similar relevant entertainment will come into force).
- 8.2 If the Council decides to adopt a policy in relation to the grant of sex establishments and sexual entertainment venues in particular, it may decide in that policy for example to refuse applications having regard to the number of sex establishment they consider appropriate for a particular locality. Therefore all applications made on or after the 1st appointed day, but on or before the 2nd appointed day, must be considered together. The Home Office have stipulated this to ensure that applicants are given sufficient time to submit their application and all applications received on or before the 2nd appointed day are considered on their individual merit and not on any first come first serve basis.
- 8.3 However no applications for sexual entertainment venues can be determined before the 2nd appointed day. After the 2nd appointed day, the Council must decide what if any applications for licences should be granted.
- 8.4 If a new applicant is granted a sex establishment licence (sexual entertainment venue) it will take effect immediately. If an existing operator is granted a licence, it will not take effect until the 3rd appointed day, but up to the point of the 3rd appointed day, they will still be allowed to operate under their existing Premises Licence or Club Premises Certificate granted to them under the Licensing Act 2003.
- 8.5 Applications made after the 2nd appointed day must be considered when they are made, but only once all applications made on or before the 2nd appointed day have been determined. This determination does not include references to the time taken in the resolution of any appeal lodged by an applicant against the refusal of a licence.
- 8.6 As with applications received on or before the 2nd appointed day, sexual entertainment venue licences granted to new applicants will take effect immediately and licences granted to existing operators will take effect from the 3rd appointed day or later if the application is determined after this date.
- 8.7 The Council would be required to determine any outstanding application made for a Premises Licence under the Licensing Act 2003 where it is possible to do so which includes the provision of activities regarded as relevant entertainment under the new licensing requirements, before the date that Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by Section 27 of the Policing & Crime Act 2009 came into force in our area.
- 8.8 If it has not been possible to determine an application before the 1st appointed day however, the Council must advise applicants that they will need to submit an application for a sex establishment licence as set out in Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, if they wish to provide relevant entertainment.
- 8.9 In effect this means that from the 1st appointed day onwards, any applications outstanding under the Licensing Act 2003 which includes the provision of relevant entertainment, must be considered as though they are new applicants under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982.
- 8.10 Applicants for a sex establishment licence (sexual entertainment venue), must give public notice of the application no later than 7 days after the date the application has been submitted to the Council by publishing an advertisement in a local newspaper that is circulated in the local authority area. Where the application relates to a premises, a

notice must also be displayed on or near the premises, but always in a place where it can be conveniently read by members of the public. The notice must be displayed for a period of 21 days beginning from the date the applications was submitted.

- 8.11 The Council can prescribe the form of notice that it requires an applicant for a sexual entertainment venue licence in our area to use which must also identify the premises in question or if the application relates to a vehicle, vessel or stall, specify where it will be used as a sex establishment.
- 8.12 The Council will be able to impose terms, conditions or restrictions on any sex establishment (sexual entertainment venue) that it grants a licence to in the form of conditions specific to the individual premises under paragraph 8 of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982.
- 8.13 Alternatively, under regulations made by the Council in accordance with paragraph 13 of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, it can attach standard conditions which would then be applied to all sex establishments, or to particular types of sex establishments.
- 8.14 It should be noted however that any conditions attached to the licence of an existing lap dancing club (or similar venue) which relate to what will be known as 'relevant entertainment' under the new provisions and which was granted under the Licensing Act 2003, will be deleted by those new provisions as from the 3rd appointed day onwards.
- 8.15 Therefore the Council may wish to replicate those conditions or replace them with new conditions on a sex establishment licence (sexual entertainment venue) which are consistent with Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982.
- 8.16 Any conditions that remain on the operators Premises Licence that they and the Licensing Authority may consider superfluous to retain on the Premises Licence or Club Premises Certificate can be removed by way of the operator submitting an application under the minor variations procedure (Section 41A of the Licensing Act 2003).

9. Objections to an Application

- 9.1 Where it considers an application for the grant, renewal or transfer of a sex establishment licence the Council should have regard to any observations submitted to it by the Chief Officer of Police and any other objections that they have received from anyone else within 28 days of the application having been submitted. Any person can object to an application, but their objection must be relevant to the reasons that the Council can refuse a licence application and which have been detailed in paragraph 4.5 of this report. Objectors must give notice of their objection in writing, stating the grounds on which they are objecting.
- 9.2 If the Council receives a written notice of any objection it will give notice in writing to the applicant detailing the reasons for the objection before it considers their application. The Council will not reveal their name or address of the objector to the applicant without the consent of the objector.

10. Hearings

- 10.1 The Council will give all applicants the opportunity to appear before and be heard by the Licensing Committee or Licensing Sub-Committee that will be responsible for

determining the application in accordance with paragraph 10(19) of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, before refusing an application.

- 10.2 Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 does not make explicit provision for any objectors to be heard at a hearing, but this does not mean that the Licensing Committee will not hear those objections. Case law on this question states that while Local Authorities are under no obligation to offer an oral hearing to objectors, they may do so at their discretion. It should be noted however that the Council is under a duty to consider any objections made within 28 days of the application being submitted to it, but has discretion to hear any late objections provided the applicant is given the opportunity to respond to those objections

11. Appeals

- 11.1 An applicant may appeal any decision that the Council has made to refuse an application for the grant, renewal or transfer of a sex establishment licence to a Magistrates Court unless the application was refused under paragraph 12(3) (c) or (d) of the Local Government (Miscellaneous Provisions) Act 1982 in which case the applicant can challenge the decision to refuse by way of a judicial review. The detail of paragraph 12(3) (c) or (d) is as follows:

(c) That the number of Sex Establishments in the relevant locality at the time the application is made is equal to or exceeds the number, which the authority considers appropriate for that locality;

(d) That the grant or renewal of the licence would be inappropriate having regard;

i) to the character of the relevant locality

ii) to the use to which any premises in the locality are put or

iii) to the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.

12. Policy

- 12.1 Although Colchester Borough Council adopted Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 many years ago, it has never adopted a licensing policy in respect of the grant of applications for sex establishments, i.e. sex shops and sex cinemas.
- 12.2 The Council's Licensing Policy made under the Licensing Act 2003 gives advice to potential applicants the Council's approach to applications that intend to provide 'adult' entertainment involving nudity or striptease. The content of this advice is as follows:

Nudity, Striptease and Sex Related Entertainment

- 3.35 Applicants should clearly specify in their operating schedule whether they propose to have adult entertainment involving nudity or striptease or any other activity involving full or partial nudity, e.g. topless waitresses etc, or sex related entertainment such as the showing of films or other recordings with an 18 restricted category.

3.36

Nudity, Striptease and Sex Related Entertainment Policy

(i) Where relevant representations are made, applications involving nudity or striptease or sex related entertainment, may be granted subject to reasonable and proportionate conditions being attached to the grant of a licence that are commensurate to the adult entertainment offered and which are also considered necessary for the promotion of the licensing objectives.

12.3 This advice and guidance will be for the most part superseded if the Council resolve to adopt the provisions of Section 27 of the Police & Crime Act 2009 and licence sexual entertainment venues in accordance with the amendments made to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982.

12.4 The Licensing Committee may therefore wish to give its officers a steer towards whether they want to now have a policy formulated in respect of applications for sex establishments to include sexual entertainment venues (lap dancing and other relevant entertainment etc), sex shops and sex cinemas which are all now covered by the provisions of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 and also want the content of that policy might be. Particularly in relation to the question of the following matters that are reasons to refuse an application for a sex establishment licence under the Local Government (Miscellaneous Provisions) Act 1982:

(c) That the number of Sex Establishments in the relevant locality at the time the application is made is equal to or exceeds the number, which the authority considers appropriate for that locality;

(d) That the grant or renewal of the licence would be inappropriate having regard;

i) to the character of the relevant locality

ii) to the use to which any premises in the locality are put or

iii) to the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.

12.5 The Home Office Guidance advises that what constitutes 'relevant locality' is a matter for the Council to decide, although the question must be decided on the facts of the individual location and all applications must still be considered on their individual merits. Case law has indicated however that the relevant locality does not have to be a clearly pre-defined area, nor is the Council required to be able to define its precise boundaries.

12.6 Therefore the Council would not be prevented from defining the exact area of the relevant locality, or equally if it so wished, the Council could conclude that it simply refers to the area which surrounds the premises specified in the application and does not require further definition.

12.7 In any event, such a policy may provide a useful guide to potential applicants about whether a particular application is likely to be successful or not.

13. Strategic Plan References

- 13.1 The new provisions introduced by Section 27 of the Policing & Crime Act 2009 which amends Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 links into the Council's strategic plan for the following criteria:
- Community Safety
 - Community Development
- 14. Consultation**
- 14.1 There is no public consultation required for the Council to resolve to adopt Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as amended by the provisions of Section 27 of the Policing & Crime Act 2009, but it would be required to undertake a consultation with 'local people' if it decides not to adopt the amendments to Schedule 3 within one year of the provisions coming into force as from the 6 April 2010 so as to determine whether or not the Council should adopt those provisions. In this context, 'local people' is defined as anyone who lives or works in the Borough of Colchester.
- 15. Publicity Considerations**
- 15.1 If the Council resolves to adopt the amendments to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 it must publish a notice that it has passed a resolution that it is adopting the amendments made by paragraph 2(2) of Schedule 3 to the Policing & Crime Act 2009 Act for two consecutive weeks in a local newspaper that is circulated in their area. The first publication shall not be later than 28 days before the day specified in the resolution for the provisions to come into force in the local authority's area. The notice should state the general effect of Schedule 3.
- 15.2 The existing lap dancing club in Colchester which provides regular relevant entertainment as defined by the new provisions and which will need to apply for a sex establishment licence if those provisions are adopted by the Council, is aware that the provisions have come into force and has made regular enquiries with licensing officers as to whether or not the Council will be adopting these provisions. The licence holders for the club have therefore been sent a copy of this report for their information and guidance and have also been advised that the Licensing Committee will be considering this question and may be making a recommendation to full Council that it resolves to adopt the new provisions.
- 16. Financial Implications**
- 16.1 There will be costs to the Council in resolving to adopt the amended provisions to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982. These costs will include considerable officer time in preparation of reports, forms and notices, dealing with enquiries and applications in relation to this adoption and a substantial amount of additional officer time if the Licensing Committee determine that it requires the formulation of a written policy in regards to how the Council will consider applications for the grant of a sex establishment licence for sexual entertainment venues, sex shops and sex cinemas. Such a policy would also be subject to public consultation.
- 16.2 A significant additional expenditure will be required to advertise in a local newspaper any resolution that the Council may make in regards to the adoption of the amendments to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as introduced by Section 27 of the Policing & Crime Act 2009.

16.3 There is also a potential cost to the Council in an applicant appealing a refusal of an application for the grant of a sex establishment licence to the Magistrates Court, or in their seeking to judicially review the Licensing Authority's decision in respect of any refusal made under paragraph 12(3) (c) or (d) of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982. The cost of any such successful appeal or judicial review could be awarded against the Council.

17. Equality, Diversity and Human Rights Implications

17.1 If adopted, the Transitional Order will allow the Council to refuse an application for a sex establishment licence (sexual entertainment venue) whether it is from an existing operator or a new applicant, on one or more grounds which are set out in paragraph 12 of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982. When making such a decision, the Council must take into account any rights the existing operators may have under Article 1, Protocol 1 of the European Convention on Human Rights, (which entitles every person to the peaceful enjoyment of their possessions) and Article 10 (freedom of expression).

17.2 All other equality and diversity matters will have been considered when the Policing and Crime Act 2009 was passed by Parliament and by the Home Office when issuing its guidance to Local Authorities, existing operators and new applicants entitled 'Sexual Entertainment Venues', guidance for England and Wales.

18. Community Safety Implications

18.1 The adoption by the Council of the amendments made to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 as introduced by Section 27 of the Policing & Crime Act 2009 will enhance community safety in regards to how and what the Council is able to consider when determining applications which wish to provide relevant entertainment at sexual entertainment venues and will also allow 'local people' to have a greater input into this process than the Licensing Act 2003 currently allows for.

19. Health and Safety Implications

19.1 Not applicable within the context and recommendations of this report.

20. Risk Management Implications

20.1 All risk management implications are outlined in paragraphs 14.1 and 16.2 of this report.

21 Recommendations

21.1 The recommendations made to the Licensing Committee are those shown under paragraphs 1.1, 1.2 and 1.3 of this report.

Background Papers

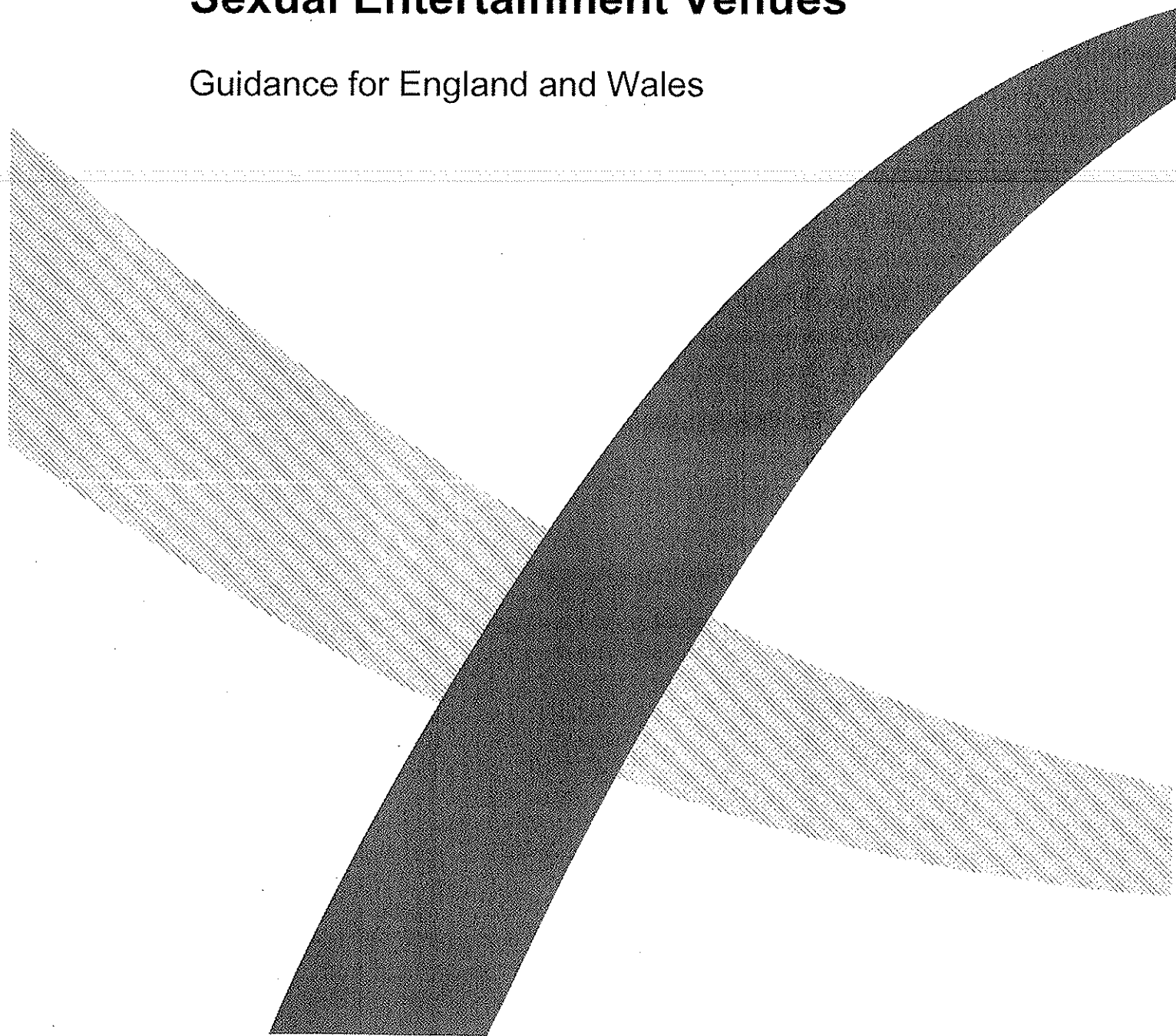
Home Office Guidance document for England and Wales entitled 'Sexual Entertainment



Home Office

Sexual Entertainment Venues

Guidance for England and Wales



Contents

Ministerial Foreword	4
1. Introduction	5
Definitions	5
Policing and Crime Act 2009	5
The Guidance	5
2. Policing and Crime Act 2009	7
Meaning of Sexual Entertainment Venue	7
Nudity	8
The Organiser	8
Spontaneous Entertainment	9
Premises that are not Sexual Entertainment Venues	9
Amendments to the Licensing Act 2003	10
Consultation with Local People	11
3. Local Government (Miscellaneous Provisions Act) 1982	13
The Appropriate Authority	13
Committee or Sub-Committee	13
Adopting the Provisions	14
Requirement for a Sex Establishment Licence	15
Premises that are Deemed to be Sexual Entertainment Venues	15
Notices	16
Application Forms	16
Single Point of Contact	17
Fees	17
Objections	18
Hearings	18
Refusal of a Licence	19
Relevant Locality	20
Licence Conditions	22
Duration of Licences	23

Appeals	23
Licensing Policies	23
Offences	24
Provisions Relating to Existing Premises	25
The Services Directive	25
4. Transitional Arrangements	27
Transitional Period	27
Existing Operators	27
New Applicants	28
Determining Application Received Before the 2nd Appointed Day	28
Determining Application Received After the 2nd Appointed Day	29
Outstanding Application	29
Existing Licence Conditions	30
ECHR Considerations	31
Changes to licensing policies	32
London	32
Sex Encounter Establishments	32
Hostess Bars	33
Soliciting for Custom	33
Annex A: Guide to Transitional Period and Existing Operators	35
Annex B: Guide to Transitional Period and New Applicants	36

MINISTERIAL FOREWORD



In September 2008, the previous Home Secretary announced the Government's intention to give local people greater say over the number and location of lap dancing clubs in their area. This followed a consultation with local authorities which highlighted concerns that existing legislation did not give communities sufficient powers to control where lap dancing clubs were established.

In order to address these concerns, section 27 of the Policing and Crime Act 2009 reclassifies lap dancing clubs as sexual entertainment venues and gives local authorities in England and Wales the power to regulate such venues as sex establishments under Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982.

These new measures, which take effect on 6th April 2010 in England and on 8th May in Wales, will, if adopted by local authorities, give local people a greater say over where and how many lap dancing clubs open and operate in their neighbourhoods.

These are important reforms to further empower local communities and the purpose of this guidance is to provide advice to local authorities, operators, local people and other interested parties on the new measures introduced by section 27 and the associated secondary legislation.

Alan Campbell

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

Parliamentary Under-Secretary of State for Crime Reduction

March 2010

INTRODUCTION

Definitions

1.1 In this guidance –

The “2009 Act” means the Policing and Crime Act 2009

The “1982 Act” means the Local Government (Miscellaneous Provisions) Act 1982

The “2003 Act” means the Licensing Act 2003

“Section 27” means section 27 of the Policing and Crime Act 2009

“Schedule 3” means Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982

Policing and Crime Act 2009

1.2 Section 27 introduces a new category of sex establishment called ‘sexual entertainment venue’, which will allow local authorities to regulate lap dancing clubs and similar venues under Schedule 3.

1.3 Section 27 gives local authorities more powers to control the number and location of lap dancing clubs and similar venues in their area. These powers are not mandatory and will only apply where they are adopted by local authorities. Where adopted, these provisions will allow local authorities to refuse an application on potentially wider grounds than is permitted under the 2003 Act and will give local people a greater say over the regulation of lap dancing clubs and similar venues in their area.

The Guidance

1.4 The guidance is provided for local authorities carrying out their functions under Schedule 3, as amended by section 27. It will also be of use to operators, the police and the general public.

- 1.5 Interpretation of the relevant primary and secondary legislation is ultimately a matter for the courts. However, local authorities are encouraged to have regard to the guidance when exercising their functions (although there is no statutory requirement to do so) in order to promote best practice and consistency across England and Wales.
- 1.6 The guidance is composed of 3 sections. Section 2 focuses on the 2009 Act and the definition of 'sexual entertainment venue'. Section 3 provides an explanation of the meaning and effect of Schedule 3 to the 1982 Act and section 4 provides guidance on the transitional provisions as set out in the transitional orders: *The Policing and Crime Act 2009 (Commencement No.1 and Transitional and Saving Provisions)(England) Order 2010* and the *Policing and Crime Act 2009 (Consequential Provisions)(England) Order 2010* and any equivalent orders made by Welsh Ministers in respect to Wales.
- 1.7 Apart from extending the scope of the 1982 Act to cover the licensing of sexual entertainment venues and removing the sex encounter establishment category in those local authority areas that adopt the new provisions, the 2009 Act and the associated secondary legislation makes only minor changes to the operation of Schedule 3.
- 1.8 Section 27 of, and Schedule 3 to, the 2009 Act come into force in England on 6th April as does the *Policing and Crime Act 2009 (Consequential Provisions) (England) Order 2010*. In Wales, the equivalent provisions come into force on 8th May 2010.

POLICING AND CRIME ACT 2009

Meaning of Sexual Entertainment Venue

- 2.1 Paragraph 2A of Schedule 3 as inserted by section 27 sets out the meaning of a 'sexual entertainment venue' and 'relevant entertainment' for the purposes of these provisions. A sexual entertainment venue is defined as *"any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer."*
- 2.2 The meaning of 'relevant entertainment' is *"any live performance or live display of nudity which is of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of an audience (whether by verbal or other means)."* An audience can consist of just one person (e.g. where the entertainment takes place in private booths).
- 2.3 While local authorities should judge each case on its merits, we would expect that the definition of relevant entertainment would apply to the following forms of entertainment as they are commonly understood:
- Lap dancing
 - Pole dancing
 - Table dancing
 - Strip shows
 - Peep shows
 - Live sex shows
- 2.4 The above list is not exhaustive and, as the understanding of the exact nature of these descriptions may vary, should only be treated as indicative. Ultimately, decisions to licence premises as sexual entertainment venues shall depend on the content of the entertainment provided and not the name it is given.

- 2.5 For the purposes of these provisions a premises includes any vessel, vehicle or stall but does not include a private dwelling to which the public are not admitted.

Nudity

- 2.6 It is important to note that although the definition of relevant entertainment makes reference to a 'live display of nudity', the mere fact that there is a display of nudity does not mean that a sex establishment licence will necessarily be required. For example, if the display forms part of a drama or dance performance in a theatre, in most cases it cannot reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience.

- 2.7 Paragraph 2A(14) of Schedule 3 sets out the definition of a 'display of nudity'. In the case of a woman, it means exposure of her nipples, pubic area, genitals or anus and, in the case of a man; it means exposure of his pubic area, genitals or anus.

The Organiser

- 2.8 The relevant entertainment must be provided for the financial gain of the 'organiser' or 'entertainer'. The 'organiser' means any person who is responsible for the organisation or management of the relevant entertainment or the premises at which the relevant entertainment is provided. In most circumstances, this will refer to the manager of the premises, but could also refer someone who is responsible for organising the relevant entertainment on behalf of the persons responsible for the management of the premises.
- 2.9 The 'organiser' must be someone who is in a position of responsibility over the provision of the relevant entertainment and should not be interpreted to mean a member of staff who is merely employed to work during the provision of relevant entertainment. It is only necessary for

one person to hold a sexual entertainment venue licence for premises, even if there is more than one person who is responsible for the organisation or management of the relevant entertainment or the premises.

Spontaneous Entertainment

2.10 Where activities that would otherwise be considered to involve the provision of relevant entertainment take place, but are not provided for the financial gain of the organiser or entertainer, such as a spontaneous display of nudity or a lap dance by a customer or guest, the premises will not be considered a sexual entertainment venue by virtue of those circumstances alone. This is because the relevant entertainment must be provided for the financial gain of the organiser or entertainer. However, it should be noted that an organiser may be considered to have provided the entertainment where he has permitted the activity to take place, whether expressly or impliedly.

Premises that are not sexual entertainment venues

2.11 Paragraph 2A(3) of Schedule 3 sets out those premises that are not sexual entertainment venues. These are:

- sex shops and sex cinemas (which are separately defined in Schedule 3 to the 1982 Act);
- premises which provide relevant entertainment on an infrequent basis. These are defined as premises where-
 - a) no relevant entertainment has been provided on more than 11 occasions within a 12 month period;
 - b) no such occasion has begun within a period of one month beginning with the end of the previous occasions; and
 - c) no such occasion has lasted longer than 24 hours.
- other premises or types of performances or displays exempted by an order of the Secretary of State.

2.12 Premises which provide relevant entertainment on an infrequent basis will continue to be regulated under the 2003 Act, insofar as they are

providing regulated entertainment under that Act, either by virtue of a premises licence or club premises certificate issued under Part 3 or Part 4 or a temporary events notice issued under Part 5 of that Act. Any premises that provide relevant entertainment on more occasions, more frequently or for a longer period of time than is permitted under the exemption will be operating as a sexual entertainment venue and will have committed an offence under Schedule 3 unless they hold a sexual entertainment venue licence or the local authority has waived the requirement for such a licence.

Amendments to the Licensing Act 2003

- 2.13 Schedule 7 to the 2009 Act amends the 2003 Act to ensure that premises for which a sexual entertainment venue licence is required or held (or for which the requirement has been waived under paragraph 7 of Schedule 3 to the 1982 Act) do not also require a premises licence, club premises certificate or temporary events notice in order to provide relevant entertainment. This is because such entertainment is expressly excluded from the definition of regulated entertainment found in the 2003 Act. However, if the premises also carry on other licensable activities (e.g. the sale of alcohol or the provision of regulated entertainment that is not relevant entertainment), they will nevertheless continue to require a premises licence, club premises certificate or temporary events notice under the 2003 Act for those other activities, subject to any exceptions contained in that Act.
- 2.14 In practice, this will mean that the vast majority of lap dancing clubs and similar venues will require both a sexual entertainment venue licence for the provision of relevant entertainment and a premises licence or club premises certificate for the sale of alcohol or provision of other types of regulated entertainment not covered by the definition of relevant entertainment.
- 2.15 Live music or the playing of recorded music which is integral to the provision of relevant entertainment, such as lap dancing, for which a sexual entertainment licence is required, is specifically excluded from

the definition of regulated entertainment in the 2003 Act. Therefore, a sexual entertainment venue will not require a premises licence or club premises certificate just because it plays recorded music for a performer to dance to. (Nor will providing entertainment facilities for the purposes of the provision of relevant entertainment be regulated entertainment under the 2003 Act).

- 2.16 Premises which fall under the exemption created for infrequent entertainment do not require a sexual entertainment venue licence but will instead need an appropriate authorisation under the 2003 Act, for example, to cover the performance of dance. The exemption from requirements of the 2003 Act for live music or the playing of recorded music which is integral to relevant entertainment does not apply to such venues.

Consultation with Local People

- 2.17 If a local authority has not made a resolution to adopt the provisions introduced by section 27 within one year of it coming into force it must, as soon as is reasonably practicable, consult local people about whether they should make such a resolution.
- 2.18 The purpose of this duty is to ensure that local authorities consider the views of local people where, for whatever reason, they have not adopted the provisions.
- 2.19 This duty should be seen to be an extension to existing general duties on local authorities to consult and involve local people when exercising their functions.
- 2.20 The 2009 Act is not prescriptive about how local authorities should consult with local people in order to comply with this duty. Local authorities have extensive experience of engaging with local people and will know what works best in their individual areas. Clearly, the Secretary of State expects that any consultation exercise carried out under this duty will be fair and meaningful. Local authorities should

seek to make any relevant information available to local people in order to inform their understanding and publish the outcomes of the consultation on the internet.

2.21 In practice, local authorities may decide to consult local people on this matter when they consult and involve local people on broader local priorities and crime and disorder or anti-social behaviour priorities as part of their work to develop Local Area Agreements/Local Delivery Agreements and crime and disorder strategies, as required under various existing duties, including, section 138 of the Local Government and Public Involvement in Health Act 2007 and regulation 12 of the Crime and Disorder (Formulation and Implementation of Strategy) Regulations 2007. This will ensure that consultations are not onerous and form part of the ongoing engagement with local communities undertaken by all local authorities.

2.22 For the purposes of this duty 'local people' are defined as anyone who lives or works in the local authority area.

SCHEDULE 3 TO THE LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982

The Appropriate Authority

- 3.1 The appropriate authority is responsible for determining applications for sex establishment licences. For the purposes of the 1982 Act 'appropriate authority' means the local authority which passed a resolution under section 2 of that Act to adopt Schedule 3 in their area. 'Local authority' means—
- (a) the council of a district (including a unitary County Council) or, in Wales, the principal council¹;
 - (b) the council of a London borough; and
 - (c) the Common Council of the City of London.

Committee or Sub-Committee

- 3.2 Functions under Schedule 3 are the responsibility of the full council of the appropriate authority, as defined above. Under section 101 of the Local Government Act 1972, local authorities may arrange for the discharge of these responsibilities by a committee or sub-committee of the appropriate authority.
- 3.3 An authority may delegate its functions to those who sit on its licensing committee set up to discharge licensing functions under the 2003 Act. However, when dealing with an application for a sex establishment licence, the members of the committee would not be acting as the licensing committee under the 2003 Act and would instead be exercising their functions under Schedule 3.

¹ See section 2 of the 1982 Act. Section 17 of the Local Government (Wales) Act 1994 provides that legislative references to district councils are to be interpreted as references to principal councils in Wales. Unitary County Councils have all the functions and powers of district councils.

Adopting the Provisions

- 3.4 Section 27 comes into force on 6th April 2010 in England and 8th May in Wales². On or following this date local authorities may resolve to adopt Schedule 3 to the 1982 Act as amended by the 2009 Act so that it has effect in their area.
- 3.5 Although many local authorities will have already adopted Schedule 3 to the 1982 Act for the licensing of sex shops and sex cinemas, a further resolution is necessary before the provisions introduced by Section 27 will have effect in the local authority area. However, where a local authority has not resolved to adopt Schedule 3 to the 1982 Act before the coming into force of Section 27, the amendments made to Schedule 3 by section 27 will apply automatically if a resolution to adopt Schedule 3 is made subsequently (see Schedule 3 to the 2009 Act).
- 3.6 The procedure for local authorities to adopt Schedule 3 as amended by section 27 is set out in section 2 of the 1982 Act. Firstly, the local authority must pass a resolution specifying that Schedule 3 or, in the case of an authority where Schedule 3 is already in force, the amendments made by section 27 to that Schedule, shall apply to their area and the day on which it or they shall come into force in the area. The specified day must be more than one month after the day on which the resolution was passed.
- 3.7 The local authority shall publish notice that they have passed a resolution under section 2 of the 1982 Act or (in cases where Schedule 3 is already in force but the local authority is adopting the amendments made by section 27) paragraph 2(2) of Schedule 3 to the 2009 Act for two consecutive weeks in a local newspaper that is circulated in their area. The first publication shall not be later than 28 days before the day specified in the resolution for the provisions to come into force in the

² Section 27 (11) was brought into force on 2nd March 2010 but only for the purpose of making the transitional orders.

local authority's area. The notice should state the general effect of Schedule 3.

- 3.8 While there is no statutory duty to do so, prior to deciding whether to pass a resolution, local authorities may, as a matter of good practice, wish to seek the views of local people and businesses. The Secretary of State also encourages local authorities to engage with known sexual entertainment venues at the earliest possible opportunity once a decision to adopt the provisions has been made, to ensure affected businesses are aware of what action they will need to take in order to comply with the new regime.

Requirement for a Sex Establishment Licence

- 3.9 Any person wishing to operate a sex establishment as defined by Schedule 3 requires a sex establishment licence, unless the requirement for a licence has been waived by the appropriate authority.
- 3.10 An applicant can apply for a waiver either as part of the application for a licence or separately. The local authority can grant a waiver if they consider that to require a licence would be unreasonable or inappropriate. Where a waiver is granted the appropriate authority should inform the applicant that a waiver has been granted. The waiver may last for such a period that the appropriate authority think fit, but can be terminated by the appropriate authority at any time with 28 days notice.

Premises that are deemed to be Sexual Entertainment Venues

- 3.11 Paragraph 27A of Schedule 3 deems premises with licences to operate as sexual entertainment venues to be sexual entertainment venues whilst their licence remains in force, irrespective of how frequently they are or have been providing relevant entertainment. This remains the case even if premises operate within the exemption for infrequent events.

- 3.12 If an operator with a sexual entertainment venue licence is operating within the exemption for infrequent events and no longer wants their premises to be treated as a sexual entertainment venue (e.g. because they are no longer operating as a lap dancing club) they may write to the relevant local authority to request that their licence be cancelled. Upon receiving such a request from a licence-holder a local authority must cancel the licence in question.

Notices

- 3.13 Applicants for a sex establishment licence must give public notice of the application by publishing an advertisement in a local newspaper that is circulated in the local authority area no later than 7 days after the date the application is made.
- 3.14 Where the application relates to premises, a notice should also be displayed on or near the premises in a place where it can be conveniently read by members of the public. The notice should be displayed for a period of 21 day beginning with the date the applications was made.
- 3.15 All notices should be in the form prescribed by the appropriate authority and identify the premises or, if the application relates to a vehicle, vessel or stall, specify where it will be used as a sex establishment.
- 3.16 There are similar notification requirements for applications made under the 2003 Act. Where an applicant is making an application under both Schedule 3 and the 2003 Act at the same time they may wish to combine these requirements where permitted.

Application Forms

- 3.17 Unlike the 2003 Act there is no prescribed application form for an application made under Schedule 3 to the 1982 Act. However, the application must be in writing and contain the details set out in paragraph 10 of Schedule 3 along with such other details as the

appropriate authority may reasonably require. Local authorities must provide for applications to be made electronically and may produce and publish recommended application forms for sex establishment licences setting out all the details required.

Single Point of Contact

3.18 Following amendments to sub-paragraph 10(14) made by the Provision of Services Regulations 2009, where an application for the grant, renewal or transfer of a licence is made by means of a relevant electronic facility it will be the responsibility of the appropriate authority to send a copy of an application to the chief officer of police, not later than 7 days after the date the application is received.

3.19 Where an application is made by any other means the responsibility to send a copy of the application to the chief officer of police within 7 days of the application being made will remain the responsibility of the applicant.

3.20 For the purpose of Schedule 3 a relevant electronic facility means the electronic assistance facility referred to in regulation 38 of the Provision of Services Regulations 2009 or any facility established and maintained by the appropriate authority for the purpose of receiving applications under this Schedule electronically.

Fees

3.21 Schedule 3 to the 1982 Act states that an application for the grant, renewal, variations or transfer of a sex establishment licence shall pay a reasonable fee determined by the appropriate authorities, but does not expand on what would be considered to be reasonable.

3.22 However, local authorities should have regard to the following documents when determining their fee: *The European Services*

Directive: Guidance for Local Authorities³ and LACORS Guidance on the impact of the Services Directive on councils setting and administering local licence fees within the service sector.⁴

Objections

- 3.23 When considering an application for the grant, renewal or transfer of a licence the appropriate authority should have regard to any observations submitted to it by the chief officer of police and any objections that they have received from anyone else within 28 of the application. Any person can object to an application but the objection should be relevant to the grounds set out in paragraph 12 for refusing a licence. Objections should not be based on moral grounds/values⁵ and local authorities should not consider objections that are not relevant to the grounds set out in paragraph 12. Objectors must give notice of their objection in writing, stating the general terms of the objection.
- 3.24 Where the appropriate authority receives notice of any objection the authority shall, before considering the application, give notice in writing of the general terms of the objection to the applicant. However, the appropriate authority shall not without the consent of the person making the objection reveal their name or address to the applicant.

Hearings

- 3.25 Under paragraph 10(19) of Schedule 3, before refusing an application, all applicants should be given the opportunity to appear before and be heard by the local authority committee or sub-committee that is responsible for determining the application.
- 3.26 Schedule 3 does not make explicit provision for objectors to be heard, but this does not mean that such hearings cannot take place. Rather, case law on this matter states that while local authorities are under no

³ <http://www.berr.gov.uk/files/file50026.pdf>

⁴ www.lacors.gov.uk

⁵ R v Newcastle upon Tyne City Council ex parte The Christian Institute [2001] B.L.G.R. 165

obligation to offer an oral hearing to objectors, they may do so at their discretion. Although a local authority is under a duty to consider any objections made within 28 days of the application, it has discretion to hear later objections provided the applicant is given the opportunity to deal with those objections.⁶

Refusal of a Licence

3.27 Paragraph 12 of Schedule 3 sets out the grounds for refusing an application for the grant, renewal or transfer of a licence.

A licence must not be granted:

- (a) to a person under the age of 18;
- (b) to a person who is for the time being disqualified due to the person having had a previous licence revoked in the area of the appropriate authority within the last 12 months;
- (c) to a person, other than a body corporate, who is not resident in an EEA State or was not so resident throughout the period of six months immediately preceding the date when the application was made; or
- (d) to a body corporate which is not incorporated in an EEA State; or
- (e) to a person who has, within a period of 12 months immediately preceding the date when the application was made, been refused the grant or renewal of a licence for the premises, vehicle, vessel or stall in respect of which the application is made, unless the refusal has been reversed on appeal.

3.28 A licence may be refused where:

- (a) the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason;
- (b) if the licence were to be granted, renewed or transferred the business to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the grant, renewal or transfer of such a licence if he made the application himself;

⁶ R v Plymouth City Council v Quietlynn [1998] Q.B. 114.

- (c) the number of sex establishments, or of sex establishments of a particular kind, in the relevant locality at the time the application is determined is equal to or exceeds the number which the authority consider is appropriate for that locality;
- (d) that the grant or renewal of the licence would be inappropriate, having regard—
 - (i) to the character of the relevant locality; or
 - (ii) to the use to which any premises in the vicinity are put; or
 - (iii) to the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made.

3.29 A decision to refuse a licence must be relevant to one or more of the above grounds.

3.30 When determining a licence application, the local authority must have regard to any rights the applicant may have under Article 10 (right to freedom of expression) and Article 1, Protocol 1 (protection of property) of the European Convention on Human Rights.⁷

3.31 The Provision of Services Regulations 2009⁸ amended Schedule 3 to the 1982 Act to state that, if having considered an application for the grant, renewal or transfer of a licence, the appropriate authority decides to refuse it on one or more of the above grounds, it must provide the applicant with reasons for the decision in writing.

Relevant Locality

3.32 Paragraph 12(3)(c) and 12(3)(d) of Schedule 3 allow appropriate authorities to refuse applications on grounds related to an assessment of the “relevant locality”. A licence can be refused if either, at the time the application is determined the number of sex establishments, or sex establishments of a particular kind, in the relevant locality is equal to or exceeds the number that the authority considers appropriate for that locality; or that a sex establishment would be inappropriate having

⁷ Belfast City Council v Miss Behavin' Ltd (Northern Ireland) (2007) [2007] UKHL 19

⁸ Regulation 47

regard to the character of the relevant locality, the use to which any premises in the vicinity are put or the layout, character or condition of the premises. Nil may be the appropriate number.

3.33 Schedule 3 to the 1982 Act does not define "relevant locality" further than to say that:

- (a) in relation to premises, it is the locality where they are situated;
and
- (b) in relation to a vehicle, vessel or stall, any locality where it is desired to use it as a sex establishment.

3.34 Clearly, the decision regarding what constitutes the 'relevant locality' is a matter for the appropriate authority. However, such questions must be decided on the facts of the individual application.⁹

3.35 Therefore, it is reasonable and potentially useful to future applicants, for a local authority to decide in advance of receiving any applications that certain areas are, or are not, appropriate locations for a sex establishment or a particular number of sex establishments. Nevertheless, all applications must be considered on their individual merits.

3.36 When considering a particular application case law has indicated that the relevant locality does not have to be a clearly pre-defined area nor are local authorities required to be able to define its precise boundaries. Therefore, while a local authority is not prevented from defining the exact area of the relevant locality, it is equally free to conclude that it simply refers to the area which surrounds the premises specified in the application and does not require further definition. Nevertheless a local authority's view of what constitutes a locality could be open to challenge if they took a completely unreasonable view of the area covered, for example, by concluding that two sex establishments 200 miles away from one another were in the same

⁹ See R v Peterborough City Council ex parte Quietlynn 85 L.G.R. 249 for further guidance.

locality. Case law also indicates that a relevant locality cannot be an entire local authority area or an entire town or city.¹⁰

- 3.37 Once the appropriate authority has determined the relevant locality, it should seek to make an assessment of the 'character' of the relevant locality and how many, if any, sex establishments, or sex establishments of a particular kind, it considers appropriate for that relevant locality.
- 3.38 Section 27 amends paragraph 12(3)(c) of Schedule 3 to allow local authorities to determine an appropriate number of sex establishments of a particular kind. In practice, this means that the appropriate authority may, for example, decide that a particular locality is suitable for a sex shop but is not suitable for a sexual entertainment venue or vice versa.

Licence Conditions

- 3.39 Once the appropriate authority has decided to grant a licence they are able to impose terms, conditions and restrictions on that licence, either in the form of conditions specific to the individual licence under paragraph 8 of Schedule 3 or standard conditions applicable to all sex establishments, or particular types of sex establishments, prescribed by regulations made by the appropriate authority under paragraph 13 of Schedule 3.
- 3.40 Paragraph 13 provides examples of the matters that standard conditions may address which include but are not restricted to:
- The hours of opening and closing
 - Displays and advertisements on or in sex establishments
 - The visibility of the interior of a sex establishment to passers-by
 - Any change of use from one kind of sex establishment to another

¹⁰ R v Peterborough City Council ex parte Quietlynn 85 L.G.R. 249

- 3.41 Where the appropriate authority decides to produce standard conditions under paragraph 13 they will apply to every licence granted, renewed or transferred by the authority unless they have been expressly excluded or varied.
- 3.42 Most sexual entertainment venues will require a 2003 Act licence as well as a sex establishment licence. Where this is the case, local authorities should avoid duplicating licence conditions and should ensure that conditions imposed on the each licence are relevant to the activities authorised by that licence. For example, conditions relating to the sale of alcohol should only appear on a premises licences or clubs premises certificate and should not be imposed on sexual entertainment venue licence. Likewise, conditions relating the provisions of relevant entertainment should appear on the sexual entertainment venue licence and not a premises licence or club premises certificate. Local authorities should also avoid imposing conditions on either licence that are contradictory.

Duration of Licences

- 3.43 Licences for sex establishments can be granted for up to one year.

Appeals

- 3.44 In the event that the appropriate authority refuses an application for the grant, renewal or transfer of a sex establishment licence the applicant may appeal the decision in a magistrates' court, unless the application was refused under 12(3)(c) or (d), in which case the applicant can only challenge the refusal by way of judicial review.

Licensing Policies

- 3.45 While local authorities are not required to publish a licensing policy relating to sex establishments they can do so if they wish as long as it

does not prevent any individual application from being considered on its merits at the time the application is made.¹¹

- 3.46 A licensing policy for sex establishments might include statements about where local authorities are likely to consider to be appropriate or inappropriate locations for such venues. This could be set out in general terms by reference to a particular type of premises, such as a school or place of worship, or more specifically, by reference to a defined locality.
- 3.47 Local authorities could also use a licensing policy to indicate how many sex establishments, or sex establishments of a particular kind, they consider to be appropriate for a particular locality.
- 3.48 Local authorities can also produce different policies or a separate set of criteria for different types of sex establishments. This might be appropriate to reflect distinctions between the operating requirements of different sex establishments or the fact that the location that a local authority considers appropriate for a sex shop may be different to that of a sexual entertainment venue.

Offences

- 3.49 The offences under Schedule 3 are set out in paragraphs 20 to 23 of that Schedule and include:
- knowingly causing or permitting the use of any premises as a sex establishment without a licence;
 - being the holder of a licence, knowingly employing a person in a sex establishment who is disqualified from holding a licence;
 - being the holder of a licence, knowingly contravenes, or without reasonable excuse knowingly permits the contravention of, a term, condition or restriction specified in a licence;
 - being the servant or agent of the holder of a licence, without reasonable excuse knowingly contravenes, or without reasonable

¹¹ R v Peterborough City Council ex parte Quietlynn Ltd (1986) 85 LGR 249

excuse knowingly permits the contravention of, a term, condition or restriction specified in a licence;

- being the holder of a licence, without reasonable excuse knowingly permits a person under the age of 18 to enter the establishment
- being the holder of a licence, employs a person known to them to be under 18 years of age in the business of the establishment.

3.50 A person guilty of any of the above offences is liable on summary conviction to a fine not exceeding £20,000.

3.51 It is also an offence for the holder of a licence, without reasonable excuse to fail to exhibit a copy of the licence and any standard conditions applicable to the licence in a suitable place as specified in the licence. A person guilty to this offence shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Provisions Relating to Existing Premises

3.52 Where a local authority resolves that Schedule 3 apply in their area having not previously made such a resolution, paragraphs 28 and 29 will have effect for the purpose of sex shop, sex cinemas and hostess bars, but will not have effect for the purpose of sexual entertainment venues. The transitional provisions relating to sexual entertainment venues are explained in part 4 of this guidance.

The Services Directive

3.53 Schedule 3 to the 1982 Act constitutes an authorisation scheme under Article 9 of the EU Services Directive 2006/123/EC ("the Directive") which was implemented in the UK by the Provision of Services Regulations 2009 ("2009 Regulations"), which came into force on 28th December 2009. Local authorities must ensure they comply with the Regulations when applying the licensing provisions in Schedule 3.

3.54 The Department of Business, Innovation and Skills (BIS) has produced guidance for both businesses and local authorities to assist in

understanding the impact of the Directive and 2009 Regulations and what service providers and relevant authorities must do in order to comply. Both guidance documents can be found on the BIS website: <http://www.berr.gov.uk/whatwedo/europeandtrade/europe/services-directive/page9583.html>

- 3.55 In particular, the 2009 Regulations may affect the way in which local authorities set application fees, process applications and grant licences.

TRANSITIONAL PROVISIONS

- 4.1 This section provides guidance on the transitional provisions as set out in the *Policing and Crime Act 2009 (Commencement No. 1, and Transitional and Saving Provisions)(England) Order 2010* (“the *Transitional Order*”) and the *Policing and Crime Act 2009 (Consequential Provisions)(England) Order 2010* (“the *Consequential Order*”) and the equivalent orders made by Welsh Ministers for Wales.

Transitional Period

- 4.2 The ‘transitional period’ will last for 12-months beginning with the date that the local authority resolves that Schedule 3 as amended by the ~~2009 Act will come into force in their area~~ (‘the 1st appointed day’). Six months following the 1st appointed day will be known as the ‘2nd appointed day’ and the day on which the transitional period ends will be known as the ‘3rd appointed day’.
- 4.3 The appointed days will vary across local authority areas depending on when individual local authorities resolve that the provisions will come into force in their area.

Existing Operators

- 4.4 To allow time to comply with the new regime, existing operators, who, immediately before the 1st appointed day, have a 2003 Act licence and lawfully use premises as a sexual entertainment venue under that licence or are undertaking preparatory work to use the venue in that way will be allowed to continue to provide relevant entertainment until the 3rd appointed day or the determination of any application they have submitted before that time (including any appeal against the refusal to grant a licence), whichever is later.

4.5 "Preparatory work" refers to work carried out by an operator, such as a refurbishment or refit, in order that they can use the premises as a sexual entertainment venue in the future. The operator will have been granted a 2003 Act licence before the 1st appointed day but will not have used the premises as a sexual entertainment venue by that date. It is likely that such operators will be known to a local authority. However, where a dispute arises between a local authority and an licence-holder over whether the licence-holder qualifies as an existing operator by virtue of this provision the local authority will need to seek evidence from the licence-holder to demonstrate that they clearly intended to operate a sexual entertainment venue in the future and work had been done to achieve this end.

4.6 For the purposes of the Transitional Order a "2003 Act Licence" means a premises licence or club premises certificate under which it is lawful to provide relevant entertainment.

New Applicants

4.7 New applicants are people who wish to use premises as a sexual entertainment venue after the 1st appointed day but do not already have a premises licence or club premises certificate to operate as such under the 2003 Act or do have such a licence but have not taken any steps towards operating as such. After the 1st appointed day new applicants will not be able to operate as a sexual entertainment venue until they have been granted a sexual entertainment venue licence.

Determining Applications Received On or Before the 2nd Appointed Day

4.8 Applicants will be able to submit their application for a sexual entertainment venue from the 1st appointed day onwards.

- 4.9 As the appropriate authority is able to refuse applications having regard to the number of sex establishments they consider appropriate for a particular locality, all applications made on or after the 1st appointed day but on or before the 2nd appointed day shall be considered together. This will ensure that applicants are given sufficient time to submit their application and all applications received on or before the 2nd appointed day are considered on their individual merit and not on a first come first serve basis.
- 4.10 No applications shall be determined before the 2nd appointed day. After the 2nd appointed day the appropriate authority shall decide what if any licences should be granted. If a new applicant is granted a licence it will take effect immediately. If an existing operator is granted a licence, it will not take effect until the 3rd appointed day, up to which point they will be allowed to continue to operate under their existing premises licence or club premises certificate.

Determining Applications Received After the 2nd Appointed Day

- 4.11 Applications made after the 2nd appointed day shall be considered when they are made but only once all applications made on or before that date have been determined. However, reference to determination here does not include references to the determination of any appeal against the refusal of a licence.
- 4.12 As with applications received on or before the 2nd appointed day, licences granted to new applicants shall take effect immediately and licences granted to existing operators shall take effect from the 3rd appointed day or, if later, the date the application is determined.

Outstanding Applications

- 4.13 Local authorities should attempt where possible to determine outstanding applications made under the 2003 Act, which include an application for the provision of relevant entertainment, before the date

that Schedule 3 as amended by the 2009 Act comes into force in their area.

- 4.14 Where it has not been possible to determine application before the 1st appointed day, local authorities should advise applicants that they will need to submit an application for a sex establishment licence as set out in Schedule 3 if they wish to provide relevant entertainment. From the 1st appointed day onwards outstanding applicants shall be dealt with as though they are new applicants.

Existing Licence Conditions

- 4.15 In many cases licences granted under the 2003 Act to existing operators will contain conditions that relate expressly and exclusively to the provision of relevant entertainment. Such a condition might prohibit contact between a performer and customer during a lap dance. In these cases, in order to avoid duplication, where conditions on premises licences or club premises certificates relate only to the provision of relevant entertainment, they shall be read as if they were deleted from the 3rd appointed day onwards.
- 4.16 In cases where conditions on a premises licence or clubs premises certificate are inconsistent with, and less onerous than, the conditions in the licence granted under the 1982 Act they shall likewise be read as though they have been deleted.
- 4.17 Where a local authority decides to grant a sex establishment licence to an existing operator, who is subject to conditions on their existing premises licence or club premises certificate that relate expressly to the provision of relevant entertainment, they may wish to replicate the existing conditions on the new sex establishment licence if they believe that the existing conditions are sufficient. However, they could equally decide to impose new conditions consistent with Schedule 3 if they believe that new or additional conditions are necessary.

4.18 Although the Transitional Order does not require redundant conditions to be physically removed from a premises licence or club premises certificate, operators and local authorities may agree that this is desirable in order to clarify the operator's legal obligations. Such changes can be made via the minor variations procedure under section 41A of the 2003 Act.

ECHR Considerations

4.19 The Transitional Order allows local authorities to refuse applications, whether they are from existing operators or new applicants, on one or more grounds set out in paragraph 12 of Schedule 3. When making such decisions, local authorities must take into account any rights the ~~existing operators may have under Article 1, Protocol 1 of the~~ European Convention on Human Rights (which entitles every person to the peaceful enjoyment of their possessions) and Article 10 (freedom of expression).

4.20 In light of the leading case of *Belfast City Council v Miss Behavin' Ltd (Northern Ireland)*¹² it would be prudent for local authorities to assume that freedom of expression includes the right to use particular premises as sexual entertainment venues and that a person who is denied the right to use his premises as a sexual entertainment venue where he already has a licence to do so under the 2003 Act (or in future under the 1982 Act) has been deprived of possessions. (Some Lords did not decide this point or disagreed that such rights were engaged and therefore it would still be open to local authorities to argue that such rights were not engaged in a particular case). However, in any event, the House of Lords were agreed that such rights would only be engaged at a low level. This led Lord Hoffman to say that if the local authority exercises its powers rationally and in accordance with the purposes of the statutory provisions, it would require very unusual facts for it to amount to a disproportionate restriction on Convention rights.

¹² [2007] UKHL 19

4.21 Nevertheless, local authorities would be well advised to consider whether any interference with the applicant's rights under Article 10 or Article 1, Protocol 1 of the European Convention on Human Rights is necessary and proportionate for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others or, in the case of Article 1, Protocol 1, can be justified in the general interest.

Changes to Licensing Policies

4.22 Many local authorities who have already adopted Schedule 3 will have published a licensing policy for sex establishments. Such policies may provide a useful guide to potential applicants about whether a particular application is likely to be successful or not.

4.23 Upon resolving to adopt the sexual entertainment venue provisions introduced by the 2009 Act, local authorities should ensure that their licensing policies for sex establishments are up to date and reflect the changes introduced by Section 27. This could mean updating existing policies or producing a policy specific to regulation of sexual entertainment venues.

London

Sex Encounter Establishments

4.24 London local authorities which have adopted Schedule 3 to the 1982 Act as amended by the Greater London Council (General Powers) Act 1986 are able to regulate sex encounter establishments. However, under sub-paragraph 3A(i) premises that hold a premises licence or club premises certificate for the provision of regulated entertainment or late night refreshment are not regarded as sex encounter establishments. This means that, in practice, there are very few, if any, premises that are licensed as sex encounter establishments.

- 4.25 Therefore, the transitional provisions set out that where a local authority, which has previously adopted provisions to regulate sex encounter establishments, passes a resolution to adopt Schedule 3, as amended by section 27, the existing sex encounter establishment category will be replaced by the new sexual entertainment venue category.
- 4.26 In these circumstances, an existing sex encounter establishment licence will be treated as though it had been granted under the new sexual entertainment venue regime with any terms, conditions and restrictions carried over.

Hostess Bars

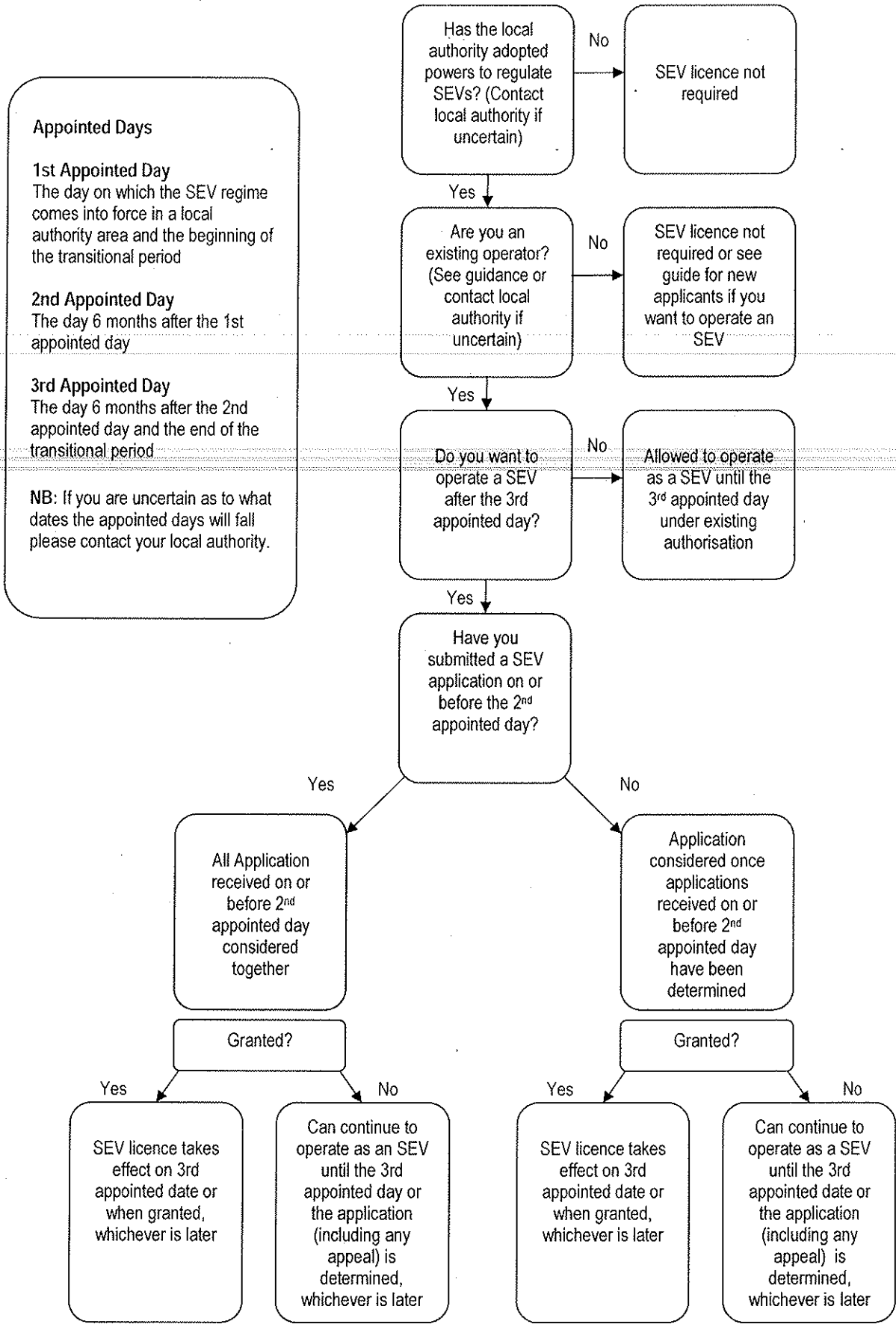
- 4.27 The hostess bar category of sex establishment, as introduced by section 33 of the London Local Authorities Act 2007, is largely unaffected by the 2009 Act provisions.
- 4.28 In cases where a London local authority has already resolved that the hostess bar category has effect in their area, they will be able to retain this category after the amendments made by the 2009 Act have been adopted and the sex encounter establishment category has been repealed, subject to the amendments made to Schedule 3 by the 2009 Act. Where London local authorities have not adopted the sexual entertainment venue provisions, it will still be open for them to resolve to adopt the hostess bar category after the 2009 Act provisions have been adopted without having to adopt the sex encounter establishment category.

Soliciting for Custom

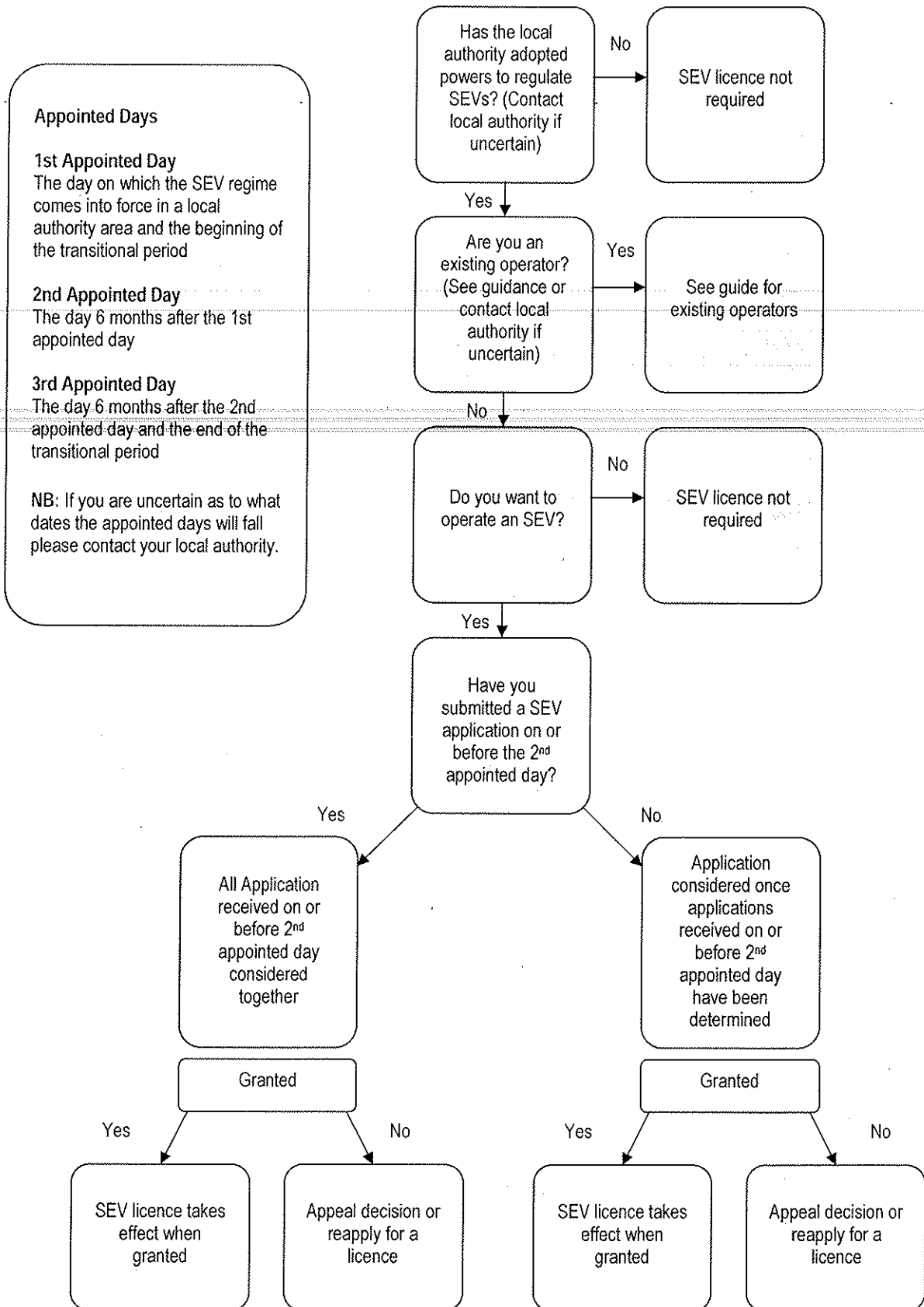
- 4.29 Under Section 22 of the London Local Authorities Act 2004, as amended by Section 72 of the London Local Authorities Act 2007, it is an offence in London to solicit for custom for a sex establishment. However, paragraph 2A provides a defence if the premises concerned are licensed under Part 3 of the 2003 Act.

4.30 When a London local authority resolves to adopt the provisions introduced by Section 27, it will be a defence if the premises are licensed as a sexual entertainment venue under Schedule 3 of the 1982 Act or are operating lawfully under a 2003 Act licence during the transitional period at the time of the alleged offence.

ANNEX A: GUIDE TO TRANSITIONAL PERIOD AND EXISTING OPERATORS



ANNEX B: GUIDE TO TRANSITIONAL PERIOD AND NEW APPLICANTS





Licensing Committee

Item

7

6 October 2010

Report of	Head of Environmental & Protective Services	Author	Simon Harvey ☎ 282701
Title	Council's Response to Home Office consultation document – 'Rebalancing the Licensing Act'.		
Wards affected	All		

This report appraises the Licensing Committee of the Councils response to the Home Office consultation document entitled 'Rebalancing the Licensing Act'.

1. Decision Required

- 1.1 To note the report in relation to the Home Office consultation document entitled 'Rebalancing the Licensing Act' and the response made to this consultation by the licensing manager on behalf of the Licensing Committee and the Council.

2. Reasons for Decision

- 2.1 On the 28 July 2010 the Government published a consultation paper on its proposals to amend the Licensing Act 2003. The six week timescale for this consultation was very tight and required a response by no later than the 8 September.
- 2.2 Unfortunately this has meant that there has not been sufficient time available to be able to bring a draft response to this consultation to the Licensing Committee for their final comment and amendment as required.
- 2.3 Therefore the licensing manager is apprising Members of the Licensing Committee of the response he had made to the consultation for their information and note, rather than their amendment.

3. Alternative Options

- 3.1 Because of the six week timescale allowed for under the consultation period there was no alternative to reporting back to Members after the response had been submitted rather than before it.

4. Supporting Information

- 4.1 The consultation document itself entitled 'Rebalancing the Licensing Act' is attached as an appendix to this report. (See attached as appendix 1).
- 4.2 A summary of the Governments proposals for amending the Licensing Act is attached to this report. (See attached as appendix 2).
- 4.3 The licensing manager's summary of the reasoning or explanation behind each of the questions posed in the consultation document is also attached to this report. (See attached as appendix 3)

- 4.4 A full list of the questions that were posed by the consultation document is attached to this report. (See attached as appendix 4).
- 4.5 The licensing manager's response to these questions is attached as an appendix to this report. (See attached as appendix 5).

5. Standard References

- 5.1 There are no particular or pertinent references to the Strategic Plan; publicity or consultation considerations; or financial; equality, diversity and human rights; community safety; health and safety or risk management implications that are relevant within the context of this advisory report.

6. Recommendations

- 6.1 The Licensing Committee is asked to note the report in relation to the Home Office consultation document entitled 'Rebalancing the Licensing Act' and if it wishes to do so, give its approval to the response made to this consultation by the licensing manager on behalf of the Licensing Committee and the Council.



Home Office

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

MINISTERIAL FOREWORD



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

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

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

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

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

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

CONTENTS

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

1. EXECUTIVE SUMMARY

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

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

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

2. BACKGROUND

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

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

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

COALITION AGREEMENT

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

- We will overhaul the Licensing Act to give local authorities and the police much stronger powers to remove licences from, or refuse to grant licences to, any premises that are causing problems.
- We will allow councils and the police to shut down permanently any shop or bar found to be persistently selling alcohol to children.
- We will double the maximum fine for 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

ISBN: 978-1-84987-245-4

HO_01692_G

Summary of Government's proposals in Home Office consultation document entitled 'Rebalancing the Licensing Act.'

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.

Summary of issues and questions raised in the Home Office consultation document 'Rebalancing the Licensing Act.'

(At present conditions can only be imposed on a licence and an application for a licence may only be refused if there are representations from responsible authorities or interested parties, (e.g. Police, Trading Standards or residents). On a review of a licence, additional conditions may be imposed, or a licensable activity may be removed from the licence (i.e. temporarily or permanently for a period not exceeding 3 months), or a licence may be revoked. An application for a review can be initiated by responsible authorities or interested parties. Therefore the Government proposes that a licensing authority should also be a responsible authority under the Act). •

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

(Where there are objections to a licence or an application for a review, licensing authorities can take steps that it considers necessary to promote the licensing objectives. Therefore the Government is considering reducing the evidential burden on licensing authorities to demonstrate that their actions are necessary and change the emphasis so that the licensing authority considers what actions would be most appropriate to promote the licensing objectives in their area. Decisions must still stay within the structure of promoting the licensing objectives however. The Government is also considering making changes to the application process so as to shift the onus onto applicants to consider and demonstrate how granting a licence will impact upon the local area and how they would mitigate any potential negative impacts of this application). • **Consultation Question 2: What impact do you think reducing the burden of proof on licensing authorities will have?**

(The above detail also applies to) • **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?**

(The Government proposes to strengthen the weight that licensing authorities must give to Police representations including those raised by the Police at a hearing and to objection notices and to require the authority 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?**

(The Government is considering expanding statutory guidance to encourage licensing authorities to consult more widely in the development and determination of a licensing policy statement). • **Consultation Question 5: How can licensing authorities encourage greater community and local resident involvement?**

(It is further considering removing the requirement for interested parties to show that they live or carry on business within the vicinity of subject premises). • **Consultation Question 6: What would be the effect of removing the requirement for interested parties to show vicinity when making relevant representations?**

(The Government proposes that Primary Care Trusts (or their equivalent) should also be included as a responsible authority under the Act. This will enable health authorities to make representations to the licensing authority in relation to the potential negative impact that licensed premises might have on National Health Service resources. Such representations could cover the impact of new premises or variations to existing licensed premises on NHS resources (primarily Accident & Emergency departments and ambulance services), or more generally, the safety of the public within the night time economy. • **Consultation Question 7: Are there any unintended consequences of designating health bodies as a responsible authority?**

(The Government proposes to add the Prevention of Health Harm as a fifth licensing objective, or make it available as a discretionary power to the authority where there is a particular local problem. The consultation document suggests that such an objective could allow licensing authorities to take account of the density of licensed premises, hours of sale and links to local alcohol related illnesses and deaths. The consultation paper suggests this could mean restrictions on additional alcohol licences, or hours of sale either within the whole local authority or within defined parts of it. It could also mean that premises are required or encouraged to display sensible drinking messages or to promote low or non-alcoholic drinks. The consultation paper acknowledges that this may have significant cost implications or burdens for businesses and their customers as a result). • **Consultation Question 8: What are the implications in including the prevention of health harm as a licensing objective?**

(The Government is contemplating expanding the scope of interested parties to also include community bodies such as school governors, housing associations and registered social landlords which may make or wish to make representations as a collective, rather than as individual citizens). • **Consultation Question 9: What would be the effect of making community group's interested parties under the Licensing Act, and which groups should be included?**

(The consultation document considers the position with regard to appeals to the Magistrates Court which hears the application again as a fresh application. However, the Magistrates Court are bound by the licensing authority's licensing policy as well as statutory guidance issued under the Act. On appeal the Court may dismiss the appeal, substitute any other decision the licensing authority could have made, or remit the case back to the local authority to rehear and dispose of in accordance with the Court's direction. Therefore the Government is proposing that the default position for Magistrates should be to remit the case back to the licensing authority to hear.

The consultation paper also states any proposal would include safeguards to ensure that Article 6 of the European Convention on Human Rights as to a fair trial is 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?**

(When there is a review of a licence a licensing authority may modify the conditions of the licence, remove the designated supervisor, suspend a licence for up to 3 months, suspend a licensable activity for up to 3 months or remove a licensable activity from the licence, or revoke the licence. Such a decision does not take effect until the time for appeal (21 days) has elapsed or until an appeal lodged is disposed of. The Government is concerned that evidence suggests some decisions are appealed against to ensure that premises are able to trade during a profitable period and that the appeal may be withdrawn once the period has passed. Therefore the Government suggests that the sanction imposed by the licensing authority should come into force when the determination is served on the licence holder and the sanction should remain in place 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.**

(The consultation document addresses the issue of late night drinking. It states that as at 31 March 2009 there were 7,178 premises holding licences to retail alcohol for up to 24 hours nationally. Many of these were hotels or guest houses, or are shop or supermarket off sales. 845 premises nationwide were pubs, bars and nightclubs able to sell alcohol for consumption on the premises for up to 24 hours, although there is no data to show just how many of these premises actually open after midnight or between 3am and 6am. The consultation acknowledges that many of the premises do not actually sell alcohol during these hours however, but merely have an authorisation to so. Under the Crime and Security Act 2010, local authorities will have power to make Early Morning Restriction Orders which restrict the sale of alcohol between 03.00am and 06.00am. The commencement date for this authorisation has not been announced yet and the consultation suggests that the Government intends to amend the power to allow licensing authorities to decide which hours they wish to prevent premises from opening between 00.00 (midnight) to 06.00 a.m. An Early Morning Restriction Order will also be permitted if a licensing authority feels it would be 'beneficial' for the promotion of the licensing objectives rather than 'necessary'). • **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?**

The Environment Crime Reduction Act 2006 introduced a power for Councils to designate an area or areas as Alcohol Disorder Zones (ADZ) and allow them to charge a levy on problem premises in the ADZ. To date no such zones have been applied for anywhere in the country. • **Consultation Question 13: Do you have any concerns about repealing Alcohol Disorder Zones?**

Under the current legislation and the guidance that accompanies it, local authorities are permitted to have cumulative impact policies which can restrict the number of licensed premises in an area specified as a stress area and which is also known as a cumulative impact or stress area policy. At present in order to designate such an area as a stress area it needs to be evidenced that the number of licensed premises in that area is adversely impacting upon the licensing objectives. The Government is considering removing the evidential requirement for such policies. • **Consultation Question 14: What are the consequences of removing the evidential requirement for Cumulative Impact Policies?**

The Government proposes enabling 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. • **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?**

The consultation paper also suggests that if such a levy is introduced reductions could be given to premises involved in the schemes (which reduce additional policing costs) which are deemed best practice such as the Best Bar None award. • **Consultation Question 16: Do you think it would be advantageous to offer such reductions for the late night levy?**

It further suggests that other night time economy costs (e.g. taxi marshalling or street cleaning) could be funded from 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?**

The consultation paper suggests that the Government will amend the guidance which accompanies the Act to permit licensing authorities to have greater independence concerning closing times (e.g. staggering closing times, fixed closing times or zoning etc). • **Consultation Question 18: Do you believe that giving more autonomy to local authorities regarding closing times would be advantageous to cutting alcohol-related crime?**

The consultation proposes making significant changes to the system of Temporary Event Notices (TEN's). The Government has already amended the legislation with effect from October of this year to extend the time allowed for the Police to respond to a TEN from 48 hours to 2 working days. The Government also proposes making further changes to the TENs regime. At present a TEN overrides any conditions attached to a Premises Licence or Club Premises Certificate. The consultation proposes that the time for applying for a TEN when a premises licence is in force should be extended to one month and that the time allowed for the Police to object to a TEN where a premises licence or club premises certificate is in force should be extended to 5 working days. Licensing authorities would also be given the discretion to apply existing licensing conditions for the period of a TEN.

The right to object which is currently restricted to the Police only on grounds of Crime and Disorder would be extended to other responsible authorities and to the other licensing objectives. To prevent possible delays in notices coming to the attention of the Police, the licensing authority will be entitled to specify an exact address where TENS must be served upon the Police. The time for serving a TEN in respect of non-licensed premises will be extended to 15 working days. Personal licence holders will be restricted to applying for up to 12 TENS per year as opposed to the 50 they can apply for at this present time and multiple applications for TENS would be prohibited. • **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?**

As per above question 19. • **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)?**

The consultation paper expresses the Governments concern at the amount of alcohol being consumed by children. Underage sales is a criminal offence which can attract a penalty of up to £10,000 although the licence holder may be given an option of a voluntary 48 hour closure notice by the Police as an alternative to a prosecution (which is a similar situation to being given a fixed penalty notice for speeding or littering etc rather than facing prosecution). Therefore the Government proposes to double the fine for persistent underage selling to £20,000 and is also considering amending the voluntary closure period to 7 days as a minimum, with an upper limit which is yet to be determined. • **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?**

The consultation paper advises that the Government is considering ensuring that all premises found persistently selling alcohol to children will be subject to an automatic review of their licence regardless of whether or not they have been subjected to a voluntary closure or prosecution. • **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?**

The Government is proposing introducing controls which would prevent the sale of alcohol at below cost with a view to restricting binge drinking. • **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.**

The consultation paper addresses regulatory matters including the question of licence fees. In 2006 a Government commissioned report concluded there was a £43 million shortfall for the 3 year period 2004/5 to 2006/7 and recommended an increase in licence fees of 7% for the 3 year period 2007/8 to 2009/10. However this was never implemented and the Government now proposes enabling local authorities to increase licence fees so that they are based on a full cost recovery. The Government also acknowledges that the tougher regime proposed by the consultation paper may lead to an increase in the number of licence reviews and an increase burden on licensing authorities but which should be reflected in the level of fees. • **Consultation Question 25: Would you be in favour of increasing licence fees based on full cost recovery, and what impact would this have?**

Under the current legislation, a fee is payable on application for a licence and then subsequently an annual fee, rather than a renewal of licence fee is paid. However there is no provision under the licensing act that allows for a licence to be revoked in the event that the annual fee is not paid. Under such circumstances all the local authority can do is to take civil proceedings against the licence holder to recover the debt. This has proved wholly unworkable in most instances, particularly where as occasionally happens, premises are abandoned or go out of business and debts occur, but the licence still remains entirely in place under the same terms and conditions which simply allows for a new owner to transfer an existing licence into their name without being subject to any application procedure or cost, other than the cost of transferring

the licence. For premises at the lower end of the fees scale cost recovery through the civil Court is not economic until the licence fee is at least 2 years or more in arrears. Therefore the Government proposes permitting the automatic revocation of a licence if the annual fee is not paid. • **Consultation Question 26: Are you in favour of automatically revoking the premises licence if the annual fees have not been paid?**

Members of the Licensing Committee will be aware of the new mandatory conditions to be attached to licences which partly came into force in April. In summary these condition a ban on irresponsible drinks promotions, a ban on dispensing alcohol directly into the mouths of customers, the requirement to ensure availability of free tap water, a requirement for premises to have an age verification policy and a requirement for on-licence premises to be able to offer their customers small measures of beer, wine and sprits. The first three of these are already in effect; the last two come into effect on the 1 October. • **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?**

As per the above • **Consultation Question 28: Would you support the repeal of any or all of the mandatory conditions?**

The consultation document finally seeks views on the possibility of further de-regulation of the Licensing Act to reduce the administrative burden on businesses and also licensing authorities. It is suggested in the consultation document for example that application forms for premises licences and TENs could be reduced in length and that the requirement for the licensing authority to determine and publish a statement of Licensing Policy every 3 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?**

**Summary of questions in Home Office consultation document
'Rebalancing the Licensing Act.'**

- 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?

Colchester Borough Council

33 Sheepen Road, Colchester CO3 3WG
Telephone (01206) 282222 DX 729040 Colchester 15
Textphone users dial 18001 followed by the full number
that you wish to call.

Environmental & Protective Services

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

Contact Mr S Harvey

Phone (01206) 282701 Fax (01206) 506014

E-mail simon.harvey@colchester.gov.uk

Your ref

Our ref EPS/SJH/Licensing

Date 6 September 2010

Dear Sir/Madam

Re Response to Rebalancing the Licensing Act

Please see below the response sent on behalf of Colchester Borough Council to the Home Office consultation document 'Rebalancing the Licensing Act'. The replies are listed in the order that the questions are posed in the consultation document.

Q1: What do you think the impact would be of making relevant licensing authorities responsible authorities?

This is a proposal that has long been lobbied for by this Council. It would also sensibly align the Licensing Act 2003 with the provisions allowed for under the Gambling Act 2005. It is anomalous to recognise and accept the Licensing Authority as a responsible authority under one piece of legislation and not the other, particularly when the negative aspects of the licensing act such as alcohol related crime and disorder and noise nuisance has a much greater impact on most local communities than the gambling act does.

Such a proposal could however place a greater burden on already overstretched licensing authorities from the weight of expectation from residents and other interested parties that the licensing authority would be able to enforce all complaints brought to their attention by way of a review for example. It would therefore be essential that all other enforcing responsible authorities continue to work in partnership and continue to take the lead for those licensing objectives where they have the primary role and experience, e.g. the Police in relation to the Prevention of Crime and Disorder.

Should this proposed amendment be introduced, it is important that there are checks and balances built into allowing licensing authorities to adopt the role of a responsible authority by ensuring that licensing authorities are empowered to take action where they can show that it is necessary and proportionate for them to do so in order to promote the licensing objectives within their area.

Colchester Borough Council also welcomes the Governments proposal to shift the onus onto applicants to consider and demonstrate to the licensing authority how granting their

application will impact on the local area and how they will mitigate any potential negative impacts of the application.

From dialogue with other licensing authorities for example, it is clear that scant regard or attention is paid by applicants to most local licensing policies and in part this could be because the majority of applications were submitted on behalf of applicants by nationally based Solicitors or pub companies, most of whom have little or no knowledge of the local area which the premises concerned is situated in and who as a result often submit standard template operating schedules and standard offers of conditions to attach to the grant of licence.

This situation could be ameliorated by the applicant also having to submit an impact assessment in support of their application which would show that they had taken into account the circumstances and character of the local area that the premises applied for is situated in.

Q2: What impact do you think reducing the burden of proof on licensing authorities will have?

This Council believes that all actions taken or decisions made by the licensing authority should be reasonable and proportionate and should be evidenced and explained. Rather than a reduction in the burden of proof however, it would wish to see a change of emphasis from the licensing authority being required to substantially prove that an application will have a negative impact on one or more of the licensing objectives to the applicant being required to prove beyond reasonable doubt that their application will actively promote the licensing objectives rather than negate them. Where the applicant cannot or has not provided such proof to the satisfaction of the licensing authority then the presumption should be that the application will be automatically refused and the process would be one of resubmission of the application with amendments (if the applicant still wishes to proceed), rather than refer it to a right of appeal to the Magistrates Court against the licensing authority's decision.

Otherwise the suggestion of reducing the burden of proof on licensing authorities is already negated by the decision taken by the High Court of Justice QB Division in the case of Daniel Thwaites Plc and Wirral Borough Magistrates Court and Saughall Massie Conservation Society and Wirral Borough Council EWHC 838 (Admin) 10 March 2008.

Q3: 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?

The licence application process could be strengthened by the applicant also being required to submit an impact assessment in support of their application and which must show that they have taken steps to ensure that their application will not negatively impact on the local area and on the licensing objectives. This would also ensure that the person or persons submitting the application must at least have some local knowledge of both the premises and area the premises is situated in. It would also be helpful to the licensing authority when assessing the application to know exactly what the main purpose of the business is/will be. I.e. if the main purpose of the business is a restaurant with occasional regulated entertainment then that is what interested parties and responsible authorities expect it to be and also what the licensing authority would reasonably expect to grant a licence for.

Q4: What would the effect be of requiring licensing authorities to accept all representations, notices and recommendations from the police unless there is clear evidence that these are not relevant?

This Council would not wish to see the discretion and local decision making powers of its Licensing Sub Committee fettered by a requirement that it must always accept all representations, notices and recommendations from the Police. This would also hamper the possibility of the applicant voluntarily offering conditions or measures up to the licensing authority which might be more effective in promoting the licensing objectives than those recommended by the Police. Objections or concerns against an application can often be successfully mediated or negotiated to a successful conclusion without the need and cost of a licensing hearing which can be of a benefit to all parties concerned, but again the ability to mediate or negotiate could be fettered if the licensing authority has no alternative other than to always accept the recommendations made by the Police.

Such a proposal could result in an increase in the number of hearings that the licensing authority has to hold and therefore an increase in its costs of administering the licensing regime locally. It is also likely to result in additional appeals submitted to the Magistrates Court which again would incur extra costs to the licensing authority, particularly where an applicant's appeal is successful and costs are awarded against the licensing authority as a result.

It is therefore suggested that if this proposal is to be implemented then the legislation should be amended so as to read that the appeal is made against the Police and not the licensing authority.

Q5: How can licensing authorities encourage greater community and local resident involvement?

This Council consults very widely on its licensing policy but sadly the reality is that very few responses have been received back to this consultation. In terms of residents this lack of engagement with the policy making process may be because of apathy or more likely a perception that their views will not be taken into consideration or implemented if expressed. In part this perception has been entrenched by the almost complete lack of flexibility that has been allowed to local licensing authorities under the Act and its accompanying guidance and which has made it extremely difficult for the licensing authority to determine for example what closing hours and licensable activities are right for its area or certain parts of its area. Where licensing authorities have tried to assert their independence and desire to represent local residents in this regard they have often been overturned by the Courts and have incurred additional cost to the authority as a result.

Q6: What would be the effect of removing the requirement for interested parties to show vicinity when making relevant representations?

Colchester Borough Council has adopted a common sense and pragmatic approach to the question of vicinity and as a result we have found little or no problem with argument from either interested parties, or applicants, over the acceptance of relevant representations.

The Council is concerned however that if the concept of 'vicinity' is removed it will inevitably lead to a considerable increase in licensing hearings and Magistrates Court appeals which

will result in additional costs for the Council and applicants in particular. At this very challenging time for Council budgets it would not welcome any proposal like this that would inevitably increase its workload and its costs unless there was commensurate rise in licence fees to accommodate this change.

It also seems problematical to determine exactly at what geographical point a representation from an interested party can no longer be considered as relevant to the application submitted. If the Home Office is however determined to adopt this change to the question of 'vicinity', the Council would rather see a definition of vicinity prescribed within the guidance and say for example that Councils either had to accept all representations within a 500 metre radius of the premises applied for, or had to consult with all known interested parties within a 500 metre radius of the premises.

However even this approach is inherently open to difficulty and dispute as the judicial review brought by a number of residents this year against Westminster City Council for failing to notify them of an application submitted by the Albert Hall has highlighted only too clearly and expensively for all parties concerned.

Q7: Are there any unintended consequences of designating health bodies as a responsible authority?

Colchester Council welcomes the proposal to designate Primary Care Trusts or their equivalent as a responsible authority under the Act, particularly in local areas where there is a vigorous night time economy which places great pressures on the emergency services such as the ambulance service or the local accident and emergency department.

It is vital however that for such a proposal to work that A&E data sharing and analysis is freely available (which is often not the case at this present time) to all responsible authorities and in particular to the licensing authority. It would also mean that a 'joined up' approach and partnership to data sharing is routinely entered into in order that the question of alcohol abuse and the cost in terms of the damage to lives and property can be seriously and holistically tackled and significantly reduced over time.

Q8: What are the implications in including the prevention of health harm as a licensing objective?

This Council would welcome the ability to adopt this proposed fifth licensing objective as a discretionary objective where it is considered or shown that there is a local problem in regards to significant alcohol abuse, or high levels of alcoholism and health related problems locally. This would especially be the case if licensing authorities under this fifth objective could consider this as a reason to restrict additional alcohol licences, or an increase in the hours of sale for alcohol where it is evidenced that either could cause harm to public health in a local area. Such a discretionary adoption or the consideration of such a discretionary adoption could form part of the Councils Statement of Licensing Policy for example.

Q9: What would be the effect of making community groups interested parties under the Licensing Act, and which groups should be included?

This Council believes that the licensing act already makes provision for 'a person involved in a business in the vicinity of the premises in question' to make representation which can

already pragmatically be interpreted by applying common sense to include school governors or housing associations for example and also makes provision for 'a body representing persons living in that vicinity, for example, a residents association, or a parish or town council. The guidance accompanying the Act is also clear that a person involved in a business will be given its widest possible interpretation and need not be confined to those engaged in trade and commerce and that the expression can embrace the functions of charities, churches and medical practices.

The Council therefore believes that any extension beyond this is unnecessary

Q10: 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?

This Council's opinion is that an appeal to the Magistrates Court is a re-hearing of the application and in particular the stated case of Stepney Borough Council v Joffe makes it quite clear that an appellat Court should not interfere with a decision of a lower panel (such as a local authority licensing sub committee for example) simply because it is not satisfied that the licensing sub committee is right, but that it should do so only if it is satisfied that the decision made by the licensing sub committee is wrong. Magistrates cannot reach a decision that a local authority's decision was wrong without holding a full hearing however. Therefore as a full hearing is required to be held anyway it seems inconsistent and unnecessary in terms of the valuable and limited use of Magistrates Court time and resources available for the Court to remit the matter back to the local authority for a rehearing, when the Court itself could have dealt with the application or the question of conditions to be imposed on a licence for example.

It is also this Councils opinion that such a proposal of making the default position for Magistrates Courts to remit an appeal back to the licensing authority would actually have the net effect of increasing the workload and costs to licensing authorities, but without any resultant reduction in the workload of the Magistrates Courts.

Q11: What would be the effect of amending the legislation so that the decision of the licensing authority applies as soon as the premises licence holder receives the determination.

This Council welcomes this proposal particularly in the case of sanctions imposed at a review hearing, or where there is a particularly controversial application that is likely to have a negative impact on the licensing objectives and was strongly opposed by responsible authorities and interested parties such as residents and Ward Councillors.

Provided the licensing authority has acted in a reasonable, necessary and proportionate manner in relation to the hearing and decision it has made, there should be no reason for the Court to subsequently award costs against the authority either for the appeal or for alleged loss of earnings or income by the applicant.

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

This Council broadly welcomes this proposal and would welcome the flexibility of being able to restrict the sale of alcohol beyond the current hours proposed by the use of Early Morning Restriction Orders (EMRO) under the Crime and Security Act 2010 which is the

hours of 03.00 to 06.00 a.m. and would wish to see these hours extended to include 0.00 to 06.00 (midnight to 6a.m.). The Council also welcomes the proposal that a licensing authority can create an EMRO in their area where it feels the order would be "beneficial" for the promotion of the licensing objectives rather than if it is felt to be "necessary" as is the case at the moment.

However it is concerned that because the consumption of alcohol is not an offence under the Act it would still potentially allow premises to bulk sell or persons to bulk buy an unlimited amount of alcohol and remain drinking on the premises until the early hours of the morning. An EMRO under these circumstances would potentially do nothing about restricting excessive consumption of alcohol or binge drinking and would do nothing to limit the potential for crime and disorder or noise and disturbance to local residents from patrons still leaving these premises in the very early hours of the morning.

Therefore the Council would wish to see the licensing act amended so as to make it an offence under the act for premises to remain open after the hours they have put down as their operating hours under the their operating schedule.

It would not wish to see the use of an EMRO extended to premises such as residential hotels, guest houses, or supermarkets that have a legitimate reason to offer the 24 hour sale of alcohol to their guests or customers. There is little to no evidence that premises like these are responsible for late night/early morning alcohol related crime and disorder or public nuisance.

Q13: Do you have any concerns about repealing Alcohol Disorder Zones?

This Council has no concern about repealing Alcohol Disorder Zones and is not aware that there is any Chief Officer of Police or Chief Executive in the country that has applied for one. It always seemed to be the case to this Council that local authorities and Police would not want to apply such a zone in tourist areas, or wish to be seen to admit that their area suffered from such a high level of alcohol related crime and disorder that it was necessary to apply an ADZ to it. The negative publicity and fall out arising from such a decision always seemed likely to make the use of ADZ's unworkable.

Therefore there is little point in leaving legislation on the statute books if it is not being used and is never likely to be used.

Q14: What are the consequences of removing the evidential requirement for Cumulative Impact Policies?

This Council would not wish to see the retrograde step of applicants having to prove a need for an additional licence for commercial reasons which in effect would be reintroducing the status quo as it was applied by the Licensing Justices under the 1964 Licensing Act.

It would however wish to see the present position strengthened by the applicant having to provide an impact assessment to show proof that they had considered the full impact of the application on the local area and local residents and that neither they or the licensing objectives would be negatively affected if the application was granted. This would shift the burden of providing evidence onto the applicant rather than it having to be provided by the licensing authority, responsible authorities or interested parties such as residents or Ward Councillors.

In terms of the implementation of a Cumulative Impact Policy, the Council would wish to see the requirement that there must be evidence provided to support such a policy maintained, but that the evidential burden be considerably reduced by there only being a necessity for the local Police to apply for its introduction to the licensing authority and only the Police would be required to supply evidence in support of such a policy.

Alternatively, the Home Office may wish to consider amending the legislation in regards to cumulative impact policies so that where one is in force, any licence application submitted will be automatically refused, rather than the licensing authority only being able to refuse the application if relevant representations are made as is the case at this present time.

Q15: 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?

This Council welcomes the proposal to introduce such a discretionary 'late night levy' but would be concerned that the local authority is not just used or seen as a conduit for setting up such a scheme and for collecting the charges paid under this levy, only for the revenue collected to disappear into some central pot, or to pay for the cost of local late night Policing only. The levy if introduced should be allowed to be reinvested locally to assist in the regeneration of the area subject to the levy. For example to also pay for additional street cleaning, improved security such as CCTV, street lighting or street furniture or taxi marshals

The Council would wish to see the introduction of such a levy as a discretionary option rather than a blanket option because it would not wish to see such measures being universally applied to village or rural locations where there was little or no evidence of alcohol related crime and disorder or public nuisance occurring.

It would also welcome the proposal that the amount of charge under the levy is discretionary or flexible to each individual local authority.

Q16: Do you think it would be advantageous to offer such reductions for the late night levy?

The consultation document proposes that a reduction be allowed under the levy scheme for premises that participate in schemes which reduce additional costs, or that are involved in schemes that promote best practice in the licensed trade such as the 'Best Bar None' scheme.

While best practice and participation in such schemes are to be welcomed and encouraged this Council would urge caution at their being the sole reason for suggesting such a reduction because the compliance with such best practice can unfortunately only be as good as the current premises owner/management or Designated Premises Supervisor and a change in any three of these factors can often lead to a dramatic reduction in standards, co-operation and partnership with responsible authorities such as the Police, interested parties such as residents, or with the licensing authority itself.

This Council therefore believes that if there is a reasonable and necessary need to introduce such a levy locally then the advantage of additional Policing, or additional

resources such as street cleaning, CCTV, street lighting, street furniture, late night toilet facilities to prevent public urination or defecation, or the provision of taxi marshals would be beneficial to all of the community and not just the patrons of these late night premises.

Q17: Do you agree that the additional costs of these services should be funded by the late night levy?

As per the Council's response given to questions 15 & 16 of this consultation document it would agree that additional services such as street cleaning and taxi marshals etc should be funded by late night levy.

Q18: Do you believe that giving more autonomy to local authorities regarding closing times would be advantageous to cutting alcohol-related crime?

This Council would welcome the flexibility and empowerment of being allowed to implement licensing hours to suit the needs and requirements of local residents and businesses and to be able to react to advice and opinions given by responsible authorities such as the Police or environmental health noise officers as to what might be reasonable and appropriate fixed or staggered licensing hours within its area or within zones of its area.

It is concerned however that as mentioned in the Council's response to question 12 of this consultation document that 'licensing hours' must also include the actual closing time of the premises, i.e. the time that it must shut its doors and its customers must leave the premises. Otherwise there is unlikely to be substantial gain from giving this autonomy to local authorities if premises stop selling alcohol at a certain hour, but large numbers of their customers remain consuming alcohol they have bulk purchased before the end of this sale time and who then leave the premises in the very early hours of the morning after having consumed or binge drunk large quantities of alcohol with all of the inherent alcohol related crime and disorder and public nuisance problems that this could entail.

Q19: 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?

In answer to the four parts of this question the Council would respond as follows:

a. This Council has always felt that limiting an objection to a TEN only on Crime and Disorder grounds was too restrictive and was not consistent with the promotion of the four licensing objectives overall. It appreciates that the reason behind the decision to only allow the Police the right of objection was taken for the best of intentions so as to make the TEN

a simplified 'light touch' procedure, however the reality five years after the commencement of the licensing act is that there are very often far more problems associated with noise from a TEN event than there is with crime and disorder. The Council therefore welcomes the proposal to extend the potential to object to a TEN to all other responsible authorities, particularly environmental health noise officers.

b. The Council welcomes the proposal to extend the objection period but believes that five working days is still a very limited time frame to permit responsible authorities to properly assess the event applied for and to discuss or negotiate any concerns that they may have with the applicant, or to seek clarification over questions they may have. This is especially pertinent in a time where the staff numbers of all responsible authorities and also the licensing authority itself are likely to be cut in the foreseeable future. Under those circumstances a five day objection period is likely to be a very demanding requirement indeed and could lead to events slipping through the net that ought to have been subject to closer scrutiny by the responsible authorities.

This Council would therefore prefer to see an objection period that is the same or similar to the objection period allowed for under the 'Minor Variation' process which is a ten working day period.

c. The Council welcomes the proposal to extend the notification period for the submission of a TEN from its current ten working days. In line with the response given above to question 19b, this Council would prefer to see a longer notification period as possible being given. It would suggest that ideally the minimum notification period should be 20 working days, but would accept a 15 working day period and which once again would naturally align itself with the Minor Variation timescale.

This Council does not however see any merit in the proposal to place a longer notification on certain types of premises. The licensing act has in many cases blurred the lines and distinctions between the ways that premises used to operate under the 1964 licensing act as to how they now operate under the licensing act 2003. Previously it would have been rare for a pub or bar or restaurant to operate the same opening hours as a night club for example or to offer the same kind of music and dancing entertainments as a nightclub. It may therefore be confusing for applicants, responsible authorities and the licensing authority alike if for example it was decided that only pubs or bars had to give a longer notification. There are also many community halls or village halls and members clubs that on paper are also 'licensed premises' and are able to offer alcohol and very similar opening hours and entertainment activities as offered by pubs and clubs for example. Again this could be confusing for all parties concerned and therefore this Council would prefer to see a standard notification period remain across the board for all premises.

d. This Council welcomes this proposal but would caveat this by saying that conditions should only be added where the licensing authority has received a relevant representation from a responsible authority which necessitates the imposition of existing licence conditions in order to promote one or more of the four licensing objectives. This would ensure that the procedure for submitting a TEN still retains an element of a light touch approach and would not place onerous conditions on a one off event at a community hall or village hall for example. Alternatively the licensing authority could be given discretion to attach existing licence conditions to a grant of a TEN to a premises licence or Club Premises Certificate where those conditions are relevant and consistent with the event applied for and with the positive promotion of the licensing objectives. However the Council is concerned that such

an option could involve the licensing authority in a considerable amount of additional work in filtering out those conditions that were not relevant to the event in question or to the promotion of the licensing objectives for the event in question and could make this quite confusing and onerous for applicants who may not necessarily be the holder of the premises licence or club premises certificate, or a manager or DPS of the venue holding the premises licence. Again the response the Council has made in paragraph two of question 19c would also apply as a response for question 19d.

Q20: 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)?

a. This Council would not support this proposal which it believes could have a severely adverse affect on small business such as catering firms for example who rely on running outside bars at events to supplement their income.

b. This Council would not support this proposal which could severely affect many rural areas in particular where County or agricultural shows, or food and drink fairs are held in the same field, barn or outbuilding for example.

Q21: 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?

This Council is extremely concerned about the frequency and volume of alcohol consumed by young persons particularly those that are under age children. It is also extremely concerned that not enough punitive enforcement action or sanction is taken against those persons or premises that persistently sell alcohol to under age persons, such as a review of the premises licence being sought for example.

Therefore it welcomes the proposals to extend the voluntary closure period that the Police can offer premises as an alternative to prosecution. It is concerned however that even extending this to 7 days is not enough of a punitive measure or sanction to deter the premises in question or other premises from committing the offence again and whether or not 7 days is also enough time for staff training and other measures to be put in place by the premises so that it can effectively "get its house in order".

This Council would therefore wish to see a minimum period of 14 days applied if this proposal to extend the 48 hour period is adopted. However if this measure is to be adopted so that additional staff training and other measures can take place, the government needs to ensure that the level of fine for a conviction for under age sales is not considerably lower than the income that would be lost by the premises voluntarily closing for either the 7 days proposed or the 14 days suggested by this Council. Otherwise the licence holder is more likely to choose the option of going to Court and facing prosecution and conviction on every occasion because it is perceived by them to be the cheaper option.

Q22: 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?

This Council believes that this is a problematical question because the punitive outcome of a voluntary closure could commensurately be far worse for a small retailer/licence holder than it might be for a large national retail chain/licence holder and yet the seriousness of the offence is the same and the effect on the under age person who is sold the alcohol is the same in either case. Therefore this Council believes that if a premises is persistently caught selling alcohol to under age persons then the matter ought to be dealt with by way of a review of their premises licence and where the licensing authority has the power to suspend a licence for up to 3 months or even revoke a licence for example. If the matter has become that serious then it should be an automatic case for a review of the premises licence regardless of any voluntary offer made to close the premises by the licence holder.

Q23: What do you think the impact will be of making licence reviews automatic for those found to be persistently selling alcohol to children?

This Council believes that it would send out a clear message to persistent offenders that they risk the possibility of losing their licence, but in the short term this also could initially make additional work for the licensing authority and responsible authorities such as the Police who will have no option other than to participate in the review process. However the Council welcomes this proposal both as a proportionate deterrent and as a punitive sanction.

Q24: 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.**

In answer to the three parts of this question the Council would respond as follows:

a. This Council believes that the higher the alcohol content of a product, the higher the cost price to the consumer should be. In particular this would help discourage the sale of very high strength lagers or ciders for example to those persons who drink such products not for sociable reasons, but purely because it helps them binge drink or get drunk quickly and which unfortunately often results in extreme alcohol related crime and disorder or anti social behaviour frequently displayed on the streets of our towns and cities. If it is possible to do so however the Council also believes that a distinction should be made on high quality products that also have a high alcohol volume such as malt whiskeys or barley wine for example and which may already be priced at a level that would make them unattractive to consume for the purposes of binge drinking or anti social drinking.

b. This Council believes that the most effective method would be to revoke the licence of a premises caught selling below cost price and introduce this as an offence under the legislation so that could attract a six month prison sentence and/or a £20,000 fine.

c. This Council also welcomes the proposal to use a 'Mandatory Code of Practice' to set a licence condition that no sale can be below the cost price to the premises. It would further welcome a proposal that where responsible authorities are concerned about prices for alcohol being sold in local premises this could trigger a review of the premises licence. However it would not wish to see this proposal extended to include interested parties. It would of course always be open for an interested party to raise a concern or make a complaint to a responsible authority such as the Police or Trading Standards where they had a belief or suspicion that a premises was selling below cost price.

Q25: Would you be in favour of increasing licence fees based on full cost recovery, and what impact would this have?

This Council would wholeheartedly be in favour of increasing the cost of the licence fee based on full cost recovery. There is no doubt that at present it costs most urban or urban/rural Councils more to administer and enforce the provisions of the licensing act than is taken in licence fees. This is particularly the case in relation to the cost of holding hearings under the licensing act. Colchester has a high residential population within its town centre and this has contributed to an extremely high number of hearings in our area. It is the cost of these hearings that is also such a burden on the authority. For example the licensing authority recently had to go through the statutory process of arranging for a hearing to consider an objection to a TEN. This included the cost of preparing a report for the licensing sub committee, the cost of printing and advertising the agenda and report and notifying the applicant, the Police and sub committee members that a hearing must take place to consider the objection. Prior to the hearing the applicant subsequently withdrew their application after discussion with the Police. All of this process had to be put into place for a fee of £21.

All of which means that in effect the Council tax payer is subsidising the licensing act regime out of the general fund. The impact of introducing such a measure as proposed under this question would be to end this subsidy.

Q26: Are you in favour of automatically revoking the premises licence if the annual fees have not been paid?

This Council is fully in support of such a proposal. It is entirely inconsistent that under the provisions of the Gambling Act 2005 a premises licence becomes revoked if the annual fee remains unpaid, but under the Licensing Act 2003 it becomes a matter for civil debt recovery. The cost of initiating such a process often far outweighs the amount of fee involved and many premises licence holders are aware of this.

The Council has seen the number of unpaid annual fees rise. Some of these unpaid fees are undoubtedly the result of the challenging economic circumstances many licensed premises such as pubs and clubs find themselves in at this present time, but equally many premises appear to be playing the system and which is encouraged by the knowledge that they cannot lose their licence if the fee remains unpaid. Once again under the present arrangements it is the Council tax payer who effectively ends up subsidising this non payment.

Q27: Have the first set of mandatory conditions that came into force in April 2010 had a positive impact on preventing alcohol related crime?

This Council in partnership with the local Police and licensed trade representatives took an early and very robust stance on the prohibition of irresponsible drinks promotions in Colchester. This stance was not popular with all elements of the licensed trade but has held its consensus under the possibility of robust enforcement should it not hold. It is disappointing that not all areas took that approach however and in all fairness to the licensed trade it may have meant that they have lost customers to nearby towns who decided not to adopt such a robust stance towards this issue.

It is however too early yet to say what overall impact this stance along with the other mandatory conditions that came into force in April has had on preventing alcohol related crime and disorder and it may need a longer period for such an assessment to be made.

Q28: Would you support the repeal of any or all of the mandatory conditions (conditions (a) – (e) above)?

Rather than repeal them, this Council would prefer to see a greater clarity in the wording of some of these conditions, or more helpful guidance issued as to what represents an irresponsible drinks promotion or the ways of advertising such a promotion which did not take into account internet technology and web site advertising for example, so that there is no potential for misunderstanding or challenge over exactly what does constitute an irresponsible drinks promotion. It feels that if such guidance had been available in April far more local authority areas would have been prepared to robustly approach the enforcement of this issue as the Council and its partners in Colchester were.

Q29: Would you support measures to de-regulate the Licensing Act, and what sections of the Act in your view could be removed or simplified?

This Council would wish to see a simplification and reduction in the forms to be completed under the licensing act. In particular new premises licence application and variation forms and the TEN application form. All of which are lengthy and can be confusing and have resulted in a huge amount of officer time being spent in helping applicants to complete forms and also to give advice to applicants over how to complete forms so that their intentions are clear to responsible authorities and interested parties alike and which in turn should hopefully reduce the possibility of objections being raised to the application and a need to hold an expensive licensing hearing as a result. This would reduce the administrative costs to all parties concerned particularly the applicant and also the licensing authority. The request for advice and officer time has appeared to increase commensurately in the current challenging and difficult economic climate as applicants can no longer afford to seek the services and advice of Solicitors to complete forms on their behalf which was very much the case in the early days of the licensing act.

The Council would also wish to see the wording of the offence 'carrying on a licensable activity other than in accordance with an authorisation' given much greater clarity and explanation to leave this offence far less open to interpretation, or alternatively to create a new offence under the act which simply defines it to be an offence to breach a condition attached to the premises licence or club premises certificate.

It would also wish to see the requirement removed from the act for the licensing authority to produce and publish a statement of licensing policy every 3 years which is unduly onerous, time consuming and expensive for the licensing authority to consult on and produce. If the government is concerned that such a removal would disengage the wider community and

local resident involvement in the licensing act, the evening and night time economy, alcohol related crime and disorder and the Council's policies in this regard it perhaps could consider instead the formation of local licensing panels which could be made up of representatives from responsible authorities, licensed premises, local businesses, residents the Council and the licensing authority for example and which could meet regularly to discuss the content and implementation of the Councils licensing policy to reflect local needs, concerns and issues and also to reflect on changes in legislation or guidance and how these changes will be implemented locally.

The Council would not agree with a proposal to totally deregulate the licensing act to any great extent however because this is actually likely to lead to further confusion for applicants, responsible authorities and interested parties and also to an increase in costs incurred by all parties, particularly the licensing authority, now that the act has had five years to bed in. Instead it would prefer to see those areas of the licensing act that need clarification or tightening up being scrutinised and amended accordingly by the government.

I trust that these responses are clear but should any further information or clarification be required please do not hesitate to contact the writer accordingly.

Yours sincerely



Simon Harvey
Licensing Manager

e-mail: licensing.committee@colchester.gov.uk
website: www.colchester.gov.uk