The Legislative Reform (Licensing) (Interim Authority Notices etc) Order 2010: Explanatory Document by the Department for Culture, Media and Sport

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Introduction

1. This Explanatory Document is laid before Parliament in accordance with section 14 (1) of the Legislative and Regulatory Reform Act 2006 ("the 2006 Act") together with the draft of the Legislative Reform (Licensing) (Interim Authority Notices etc) Order 2010: (the LRO).

The Duties of the Minister

2. In accordance with section 13 of the 2006 Act, the Secretary of State for Culture, Media and Sport recently conducted a public consultation on a package of proposed amendments to the Licensing Act 2003 ("the 2003 Act"). The consultation ran from 8 December 2009 until 9 February 2010. In view of the responses to the consultation, the Secretary of State considers that he should proceed with only two of the proposals, that is, to seek to amend the procedures for Interim Authority Orders (IANs) and Reinstatement on Transfer (RTs) under the 2003 Act; and to extend the period during which the police can object to a Temporary Event Notice (TEN) from 48 hours to two working days. As described further below, the remaining proposals were not consistently supported, and require further work before they could be put forward in the form of a draft Order under the 2006 Act.

3. The consultation referred to above was of a general nature, and was open to (and responded to by) organisations appearing to the Secretary of State to represent interests substantially affected by the proposals (for example, the Local Authorities Coordinators of Regulatory Services (LACORS), the British Beer and Pub Association (BBPA) and the National Association of Residents Associations (NORA).

4. The proposals do not relate to the functions of any statutory bodies, apart from (arguably) office-holders under insolvency legislation. Such office-holders were able to respond to the consultation, and their views

and experiences were also noted in responses by others such as licensing authorities.

5. The Welsh Ministers have been consulted as noted in paragraph 26 below.

6. Accordingly, the Secretary of State is laying before Parliament the documents required by section 14(1) of the 2006 Act, in relation to the IAN/RT and TENs police notification period proposals only. These proposals are the same as the ones consulted on. It is proposed to make the Order under the powers conferred by section 1 and section 2 of the 2006 Act, the former in relation to IANs and the latter in relation to TENs. The Secretary of State is satisfied that the Order satisfies the criteria set out in the applicable section for each proposal, and that it meets the conditions imposed by section 3(2) (see paragraph 68 and the following paragraphs, below).

7. For the reasons stated below the Secretary of State recommends the **negative resolution procedure** for this proposal (see further paragraph 27 below).

Summary of the Licensing Act 2003

8. The Licensing Act 2003 ("the 2003 Act") requires anyone carrying on one or more licensable activities as defined (see below) to have an appropriate form of authorisation under the Act. For activities other than temporary activities (dealt with in Part 5 of the Act), the appropriate form of authorisation is a premises licence (or a club premises certificate), which may be obtained by applying to the licensing authority and paying a set fee to cover the costs associated with the application.

9. The licensable activities are:

   - 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 a club;
   - the provision of regulated entertainment, and
   - the provision of late night refreshment.

10. The provision of regulated entertainment is defined in Schedule 1 to the Act as the provision of 'entertainment' or the provision of 'entertainment facilities'. Entertainment includes:

    - a performance of a play;
    - an exhibition of a film;
    - an indoor sporting event;
    - a boxing or wrestling entertainment;
    - a performance of live music;
    - any playing of recorded music;

- a performance of dance.

11. Late night refreshment is defined in Schedule 2 of the Act and can be summarised as the sale of hot food or drink to members of the public between the hours of 11pm and 5am for consumption on or off the premises.

12. The licensing authority must conduct its duties under the 2003 Act so as to promote the four licensing objectives:

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

Interim Authority Notices (IAN) and Reinstatements on Transfer (RTs)

13. Under s.27 of the 2003 Act, a premises licence lapses if the holder of the licence dies, becomes mentally incapable, becomes insolvent or is dissolved. The 2003 Act provides special arrangements for the continuation of permissions under a premises licence when the holder of a licence dies suddenly or becomes bankrupt or mentally incapable. In the normal course of events, the licence would lapse in such circumstances. However, there may also be some time before, for example, the deceased person's estate can be dealt with or an administrative receiver appointed. This could have a damaging effect on those with interests in the premises, such as an owner, lessor or employees working at the premises in question; and could bring unnecessary disruption. The 2003 Act therefore provides for the licence to be capable of being reinstated in a discrete period of time in certain circumstances.

14. These circumstances arise only where a premises licence has lapsed owing to the death, incapacity or insolvency of the holder. In such circumstances, an "interim authority" notice (IAN) may be given to the licensing authority only within seven days (beginning the day after the licence lapsed). Where applications are made in writing, the applicant must give notice of the application to the chief officer of police. If an application is made electronically via businesslink or the licensing authority's electronic facility, the licensing authority must notify the police no later than the first working day after the notice is given.

15. An IAN may only be given either by a person with a legal freehold or leasehold interest in the premises (see regulation 8 of the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005 (SI 2005/42)) or by a person connected to the former holder of the licence (normally a personal representative of the former holder or a person with power of attorney or where someone has become insolvent that person's insolvency practitioner) (see section 47(5) of the 2003 Act).

16. The effect of giving the notice is to reinstate the premises licence for a limited time as if the person giving the notice is the holder of the licence. This allows licensable activities to continue to take place pending a formal application for transfer of the licence. The maximum period during which an IAN may have effect is currently two months.

17. The IAN ceases to have effect unless by the end of the initial 7 day period a copy of the notice has been given to the chief officer of police. Within 48 hours of receiving the copy, and if satisfied that in the exceptional circumstances of the case failure to cancel the interim authority would undermine the crime prevention objective, the police must give a notice to that effect to the licensing authority. In such circumstances, the licensing authority must hold a hearing to consider the objection notice and cancel the IAN if it decides that it is necessary to do so for the promotion of the crime prevention objective. Otherwise, the IAN may have effect for up to two months following the receipt of the notice by the Licensing Authority. Whilst the IAN is in effect, the premises can trade normally, as if the giver of the notice were the licensee. The same range of enforcement measures (such as review of the licence, closure orders or criminal sanctions for breach of the licence) continue to apply during this time.

18. Under section 50 of the 2003 Act, where the premises licence lapses (because of death, incapacity or insolvency of the holder etc.) or by its surrender, but no IAN has effect, a person who may apply for the grant of a premises licence under section 16(1) may apply within 7 days of the lapse for the transfer of the licence to them with immediate effect pending the determination of the application. This will result in the licence being reinstated from the point at which the transfer application was received by the licensing authority (a reinstatement on transfer or "RT"). Where the application is made in writing, the person applying for the transfer must copy their application to the chief officer of police. If the application is made electronically the licensing authority must copy the application to the police. As with an IAN, pending the outcome of the process the applicant for transfer is subject to the same responsibilities (and sanctions) under the 2003 Act as the holder of the licence.

19. In relation to both IANs and RTs, the processes in sections 47 and 50 respectively are preliminary to the licence transfer process set out in sections 42ff of the 2003 Act. If a transfer application has not been made at the end of the maximum period for which an IAN can have effect (currently two months) the premises licence lapses again and no further IAN can be given (section 47(4) and (7)). Likewise, for RTs, once the seven day period during which a s50 application can be made expires, no transfer application can be made and the only option would be to apply for a fresh premises licence. In both cases, as noted, the transfer applicant must assume the obligations of a licence-holder under the 2003 Act.

Extending the time periods

20. In comparison with other processes under the 2003 Act (such as applications and full variations) the IAN/RT/Transfer provisions afford a relatively "light touch" approach, in that possible objections to applications are restricted to police views on upholding the crime prevention objective. None of the other licensing objectives, nor any of the other responsible authorities (see sections 13(4) and 69(4)) are involved. However, the timescales involved are short relative to the other processes. That they have proved to be too short in many practical situations has been confirmed by evidence from stakeholders, including Licensing Authorities, the licensed trade and the police. The Government considers that, in the sensitive and difficult circumstances where the IAN/RT provisions apply, (for example the recent death or insolvency of a family member or business partner), these time limits can be extended without significant risk to the licensing objectives in the 2003 Act, and in accordance with the criteria for LROs as set out in the 2006 Act. Therefore, the Government proposes to amend the 2003 Act to extend these timescales. This proposal was originally put forward as part of the Department for Culture, Media and Sport's Simplification Plan.

TENS: police objection period

21. The Licensing Act provides for a light touch authorisation under which any person may submit a notification to the licensing authority to conduct licensable activities on a temporary basis (i.e., for a period not exceeding 96 hours and subject to capacity and other limits (see sections 100(5)(b) and (d), 101 and 107)). The TEN must be given to the licensing authority and the police at least ten working days in advance of the planned event. The licensing authority issues an acknowledgement to the event holder if it is satisfied that the TEN is within the statutory limits (for example, for the permitted number of events that can be held at one premises per year) and has otherwise been submitted in accordance with Part 5 of the Act (s102). If the TEN is not within the statutory limits, the authority must issue a counter notice, which renders the TEN ineffective. Otherwise, only the police can object to a TEN, on crime prevention grounds. The police have 48 hours after receipt of the TEN to object to the event taking place by giving an objection notice to the LA and the premises user. The LA must hold a hearing to consider any objection and, if it is decided 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.

22. Local authority and police licensing officers have reported that, in some circumstances, the 48 hour period during which the police may object to a TEN does not give them the full time intended, and this may limit or prevent the police from making a proper assessment of the risk of crime and disorder. This may happen when a TEN is delivered to an police station (which may be unstaffed) on a Friday night, but not actually received by the chief officer of police until the beginning of the following week, by which time the objection period will have elapsed. This was not the intention of the 2003 Act, which was to give the police two days to consider a TEN. The deployment of limited police resources for

maximum operational efficiency means that invariably, not all police stations in England and Wales are staffed over the weekend. The 'giving' of TENs by leaving them at unstaffed police stations on Friday evenings has been a source of regular correspondence with the Department since the commencement of the 2003 Act, from licensing authorities and individuals concerned that the safeguards in the Act are not being applied properly in these cases. In addition, Part 5 of the 2003 Act does not prescribe the method of 'giving' a TEN, nor does it empower the Secretary of State to do so by secondary legislation (cf sections 54 and 91 in relation to premises licences and club premises certificates). Section 184 of the Act is also of limited assistance in this regard: subsection (3) permits a TEN to be given by 'delivering it' to the recipient, but the 'proper address' provisions do not add anything meaningful in the case of the police. It has therefore been difficult for the police to argue that TENs delivered to unstaffed police stations on Friday evenings are not properly 'given' under the 2003 Act.

23. Therefore, the Secretary of State believes there are strong arguments for extending the police objection period from 48 hours to two working days by Legislative Reform Order. This small change will provide a clearer timescale to ensure the police have a proper opportunity to scrutinise TENs, increasing the likelihood that objections are made where necessary and that a more consistent approach is followed. This measure would therefore satisfy the principles set out in section 2 of the 2006 Act, i.e. that:
    - regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent; and
    - regulatory activities should be targeted at cases in which action is needed.

    The overall waiting period for a TEN event (the notice must be given at least ten working days before the event begins (s100(7)) will be unchanged. The main difference will be that a person submitting a TEN on a Thursday, Friday, weekend or Bank Holiday will have to wait for up to two additional days before being made aware of whether the police have objections on crime prevention grounds. The timescale for holding a hearing to consider any such objections will, in such cases, be shortened by a corresponding amount.

Summary of the proposals

24. We therefore propose to amend the 2003 Act to:

- extend the period during which specific persons may notify interim authority following the death, incapacity or insolvency of the licence holder from 7 to 28 days;
- extend the period during which a person may apply for an RT from 7 to 28 days;
- extend the period during which the police may object to an IAN from 48 hours to 2 working days;
- extend the maximum period during which interim authority can have effect from 2 months to 3 months; and;

- extend the period during which the police may object to a TEN from 48 hours to 2 working days.

Administrative cost savings

25. We have estimated that the annual cost savings from the proposals relating to IANs and RTs will be around **£5.52m-10.52m.** This is made up largely of the anticipated reduction in periods of lost turnover whilst a licence has lapsed. There is also a small element of savings derived from the removal of the need to apply for a new premises licence. We estimated that the change to the TENs objection period would have an extremely small 'notional' burden on TENs users of just £8-£61k annually in England and Wales. This burden is 'notional' because it relates to the costs of events not taking place that, if properly assessed by the police, would not be going ahead in the manner described on the TEN because of the risk of crime and disorder. We have not tried to estimate any costs savings that may arise to the police from the proposal, nor any cost savings that may arise due to police objections being focussed more exclusively on events that present a risk of crime and disorder. Full details of the evidence and assumptions used to form these estimated cost savings are provided in the accompanying Impact Assessment.

Consultation with Welsh Ministers

26. The Licensing Act extends to England and Wales. Licensing matters are not at present devolved to the Welsh Assembly Government or the Assembly. However, the Welsh Assembly Government has been kept informed and consulted on these proposals.

Parliamentary resolution procedure

27. The Secretary of State considers that the level of Parliamentary scrutiny appropriate for this proposal is the **negative resolution** procedure. His reasons for this are as follows:
    - The proposal leaves the substance of the provisions intact, including the level and sources of scrutiny of applications and notices, and the criteria under which they are to be granted, refused, or objected to. The procedures are also left as they are, save for the extended time limits.
    - Although the draft Order could not be described as purely technical, it is not far removed from that description.
    - The proposed changes are simple and merely involve the lengthening of certain timescales.
    - No possible adverse effects on the licensing objectives were identified in the consultation.
    - Amongst those who responded to the consultation, the proposals relating to of IANs and RTs received unanimous support. The proposal to extend the time limit for police objection for TENs received near unanimous support.
    - The benefits of the proposals (e.g. to bereaved relatives and to the administration of the TENs system) are clear and have been said by some respondents to be urgently required (see the examples quoted below).

Summary of public consultation

28. The Secretary of State conducted a public consultation as noted above. In addition to the proposed simplification measures for IANs and RTs; and the police objection period for TENs there were also proposals to introduce a procedure under which TENs submitted late (i.e., without the required notice period of ten working days could be accepted, and to simplify the consultation arrangements for local government 'Licensing Statements'. The consultation documents were published on the Department's website and distributed to various organisations that have an interest in the licensing process and a list of those who responded can be found at Annex C.

Consultation results: late TENs and Licensing Statements

29. The proposals in relation to late TENs and Licensing Statements received a mixed response. In the case of late TENs, about a third of the respondents supported the principle but not the details of the proposal. In the case of Licensing Statements, a small number of respondents also opposed the proposals on principle. The Secretary of State has therefore elected to look again at these proposals in light of the specific issues raised in consultation before asking Parliament to agree changes under the Legislative Reform Order process.

Consultation results: police objection period

30. The Secretary of State's proposal was to change the police objection period for TENs from 48 hours to **either** two or three working days. The consultation document stated that the latter option might not be regarded as fulfilling the requirement of the 2006 Act that the measure reduces a burden or an overall burden, but that, if it received sufficient support, it could be brought forward if a further legislative opportunity arose. There was almost unanimous approval, from those who responded to this part of the consultation, for the extension of the police objection period to at least two working days. (It should be noted that a number of the respondents simply indicated assent to the entire proposal and did not make it clear whether they preferred two or three working days.) A small number of respondents not only agreed with the extension to two or three days but expressed a preference for an even longer period. However, such further extensions were generally only proposed in the context of wider recommendations for reform of the TENs system.

Support for two working days for police objection

31. The majority of respondents who expressed a preference preferred an extension to two working days rather than three. The extension to three working days was opposed by a large proportion of LAs; trade associations representing the licensed trade; licensing lawyers; and community bodies. The main arguments for increasing not extending the period beyond two working days were as follows:
    a) it would reduce the time available for the hearing that follows a police objection. This would put pressure on licensing authorities in particular, because they have to arrange the hearing; and

b) the extra day would cause an increased period of uncertainty for all TENs users.

32. Local Authorities Coordinators of Regulatory Services (LACORS) invited all licensing authorities to contribute to its response, and considered the proposals with the 18 members of its Licensing and Gambling Policy Forum. Its view was that "2 working days strikes the fairest balance for all involved in the TENs system."

33. Scarborough BC opposed the further extension on the grounds that "The Licensing Authority may be left with insufficient time to organise a Hearing". (It should be noted that Scarborough felt so strongly on this point that they asserted that the proposal to extend the period to three working days was of constitutional significance. See below, paragraph 82). Arun DC described similar concerns in more detail: "because the council must by way of its constitution publish papers and arrange hearings and if additional days for objections are permitted, it becomes very difficult to organise members, legal support and committee support." Birmingham City Council recited the same reasoning, opposing it on the grounds of "the knock on effect this would have on the appeals procedure. Hastings BC and the other 13 authorities in the East and West Sussex licensing Group also oppose a move to three working days "because of the lack of time to hold a hearing". Sheffield City Council, Leeds CC, Cornwall CC, Wakefield CC, South Somerset DC, Knowsley DC (with caveats), Cardiff CC, Kensington and Chelsea LB and Suffolk Coastal held similar views.

34. The Central Council of Physical Recreation was concerned about an increased level of uncertainty for TENs users: "CCPR believes that the key issue at stake between 2 days and 3 days is not the length of time required to risk assess a Temporary Event, but the ability of the individual police force to schedule this work amongst its other responsibilities. Changing the notice period from 48 hours to 2 working days substantially assists with this (on the assumption that 2 working days must fall between a Monday and a Friday). CCPR supports the view in the consultation document that extending the police notice period to three working days would add an extra day of uncertainty for the applicant without significantly enhancing the ability of the police to schedule their work."

35. BISL (Businesses in Sport and Leisure) said: "BISL agrees that the existing timescale is already tight, and this would mean that there is one day fewer available for all involved in the process and all premises will have one extra day of uncertainty as to whether their event will be subject to a police objection. BISL agrees that this does not make any contribution to reducing the regulatory burden." The Musicians' Union, The British Beer and Pub Association and the Historic Houses Association expressed similar reasons for opposing an extension to three working days.

36. Vizards' Wyeth Solicitors asserted that: "The experience of the police involved in considering TENs should enable them to make decisions within two working days, and, such cases are likely to be infrequent." Noctis also imply that a further increase is simply not needed, whilst agreeing that a move to two working days is sensible: "Two working days seems reasonable given that the police have examples of TENs being deliberately being sought outside office hours."

Opposition to any extension to the period for police objection

37. Kuit Steinart Levy LLP (KSL) opposed any extension to the period for police objection to TENs: "Reasons: In our experience, the current 48 hour objection period is quite sufficient for the relevant Police authority to respond. As is acknowledged in the Consultation and as previously stated, TENs are often low risk and there is little evidence to show that there is an increased risk of crime & disorder associated with such events. The Consultation also acknowledges that this amendment is unlikely to result in an increase in the number of police objections received to TENS but will ensure that, '...any objections made are properly targeted at high risk events.' For events which may classed as high risk if involving a significant number of people and with the potential to increase the risk of disorder etc are often only submitted following extensive prior consultation with the relevant Police force. Accordingly, it would seem disproportionate to the policy objectives to amend this provision as in practice, these high risk events are few and far between." They were naturally even more firm in their opposition to a period of three working days.

38. JGR solicitors argue that it would be preferable to maintain the time period of 48 hours, but that the Act should be altered to say that hours falling on non-working days are not included.

The Government's Response

39. JGR's suggested alternative is very similar in effect to the proposal to extend the time period to two working days, which has been supported by the overwhelming majority of respondents (including those who would wish to go even further), and would make little practical difference. KSL's contention that the current limit of 48 hours causes no problems is contradicted by the overwhelming majority of responses to the consultation, including all of the police responses. There is no reason to agree that those submitting TENs for high-risk events inevitably do so "following extensive prior consultation with the relevant Police force", even if this is best practice and is adhered to in many cases. The point about the number of objections is misconceived. This statement quoted from the consultation document relates to the probable **net** number of objections. The Government believes that ensuring that police have the intended amount of time to consider the TEN would mean that some police objections would not be required, as the police would have time to satisfy themselves about concerns.

Support for three (or more) working days for police objection

40. All police respondents approved of a change from 48 hours to at least two working days. The majority were explicit in indicating a preference for three working days, or more. This included the Association of Chief Police Officers (ACPO), who said: "we fully support this move as this reduces the likelihood of police being unable to raise objection due to the currently restrictive 48 hour timescale. However Colleagues have pointed out that events that have the potential to be problematic often require substantial research and that, 2 working days would on occasion be not long enough." West Yorkshire police supported the extension to two working days but did not express an opinion about three working days.

41. Kent Police said: "The proposal to extend the TENS period to 3 working days is welcomed. Working on the assumption that "working day" refers to Monday to Friday, this takes into account shifts worked by officers and allows time for a considered response to an application."

42. Sergeant Trevor Lewis of Kensington and Chelsea Police said that "Whilst 2 working days will be enough in most cases there are occasions I need to liaise with other police departments based at New Scotland Yard and Charing Cross police stations and 2 days may still be insufficient time to get a full response to my enquiries."

43. Amber Valley Council also agreed with the extension to three working days: "the time period should be extended to three working days. Although the majority of Temporary Event Notices are for small functions, there is the opportunity for larger, maybe problem events to take place under a TEN. Three working days would permit the police to make extensive enquiries and consult with the applicant to ensure that no public order or crime and disorder issues arise." East Devon BC, Newcastle CC (with caveats), Salford CC, Hammersmith and Fulham LB and Herefordshire CC expressed similar views.

44. Hackney Police provided statistics that imply that the proportion of TENs in the borough that are subject to police concerns on crime and disorder grounds are far higher than the rest of England and Wales. They think that the police objection period should be longer, in the context of wider changes to the TENs system: "The team would look for a minimum of five working days in which to object to a TEN, as opposed to the current forty-eight hours. This would allow sufficient time to research the events and ensure that any risk of gang related violence may be reduced. The necessity for the five days is that each act on a TEN or the persons likely to attend requires research, this combined with an economical approach that some applicants have in giving information about the event causes a disproportionate amount of work for the team." Geoff Nancolas, an individual responding on his own behalf, also argued for a longer period in the context of wider suggested changes.

The Government's response

45. The extension to at least two working days was supported by all respondents apart from two legal practices (described below). The increase to three working days was, by contrast, not supported by any trade bodies or community organisations, and was opposed by the majority of local authorities. The Secretary of State is of the view, therefore, that the move to two working days is non-controversial and has the overwhelming support of the majority of all stakeholders in the licensing process. On the other hand, a move to three working days would be significantly controversial and would most likely be classified as adding rather than removing burdens. Nor would there be any apparent justification for such a proposal under section 2 of the 2006 Act, because the primary aim of the provision would be an extension, in all cases, of the overall length of time allowed for police consideration rather than (as with two working days) an adjustment of when the time period falls so as to permit proper and consistent regulatory responses to be made. It is, therefore, as stated in the consultation document, doubtful that it would be appropriate to bring forward a three working day measure as a Legislative Reform Order.

Consultation results: IANs and RTs

46. The proposals in relation to IANs and RTs (including the proposal to change the police objection period, which is analogous to the proposal to extend the police objection period for TENs) were **supported by all** who commented on them, with qualifications from only a handful of respondents. Although the consultation asked only for comments in the case of disagreement with the proposals, and a large majority of respondents assented to the proposals on IANs and RTs without comment, a number of respondents expressed very strong support. Some gave detailed descriptions of the potential benefits, and examples are quoted below.

Extension from 7 to 28 Days for IANs and RTs

47. The British Beer and Pub Association said that: "The BBPA has consistently argued, during discussions on the Licensing Bill and once the Act came into force, that the Interim Authority period needs to be extended as a matter of urgency. IAN come into play during difficult situations for licence holders (such as incapacity or insolvency), but the current seven consecutive day period is an unacceptably short amount of time to comply with section 47 of the Act and keep the business trading in some form. An even more pressing reason as to why the period should be extended is in the case of the licence holder's death, and the limited time relatives or associates of the deceased licensee have to submit the IAN to the licensing authority and the police. There have been well documented cases of the distress caused where licensees have died and relatives have struggled to cope with the seven day period as currently exists (examples from trade press enclosed). There is no justification or reason that we can see for such a short timescale regarding this process. The current requirements place an unnecessary burden on licensees at a sensitive time, and the BBPA therefore

welcomes the Government's proposal to increase the IAN process to 28 consecutive days."

48. Arun District Council said that "This Authority has had several experiences where the lapse of the licence so quickly after death or insolvency has caused problems and excessive problems. In one case where the premises licence holder and DPS (the same person) died, the surviving widow felt that she had too much to do in sorting out her husband's affairs as well as having to arrange to take steps to protect the business. In a second case, an insolvency agency were appointed to handle matters for a failing restaurant business. The practitioner was shocked to discover that the licence should lapse within such a short time frame. Facing the work involved and costs of relicensing the site simply to wind up the affairs seemed overly bureaucratic. A longer time would have saved many hours work."

49. Newcastle upon Tyne Licensing Authority said, "the Newcastle Licensing Authority, through experience gained by its officers over the last four/five years since the implementation of the Licensing Act 2003, is very much aware that there have a significant number of Premises Licences 'lost' in Newcastle often through pure misfortune or indeed tragedy, including the bankruptcy and even the death of the relevant Premises License Holders. These individual personal tragedies have led to some 'unfortunate' incidents with licensing officers been tasked to inform a grieving family member at a very emotive time for that individual, that Premises License previously held in the name of their deceased relative, is in fact no longer valid and as a result they have to close their businesses, which are often their only source of income, for all licensable activities until such time as a new Premises License is in force. We would therefore welcome any suitable accommodation, which would see as preventing these types of unfortunate incidents occurring."

50. Amber Valley Council agreed: "Officers agree that the time limit should be extended, as the existing 7 days is an unrealistic timescale, especially after bereavement."

Extension from two to three months for IANs

51. Hammonds Solicitors provided detailed reasons for approving of the change to three months for interim authority: "The holder of an Interim Authority Notice in the majority of cases will be an Insolvency Practitioner pending a sale of the business / assets at which time the Licence will be transferred to the purchaser where appropriate. The current time limit of 2 months in many cases does not allow sufficient time for the administration and the IP is therefore required to transfer the Licence to themselves simply to prevent the Licence from lapsing, with another transfer to follow once the business is disposed of. This results in a duplication of costs for the IP/ Estate and in most cases it is not appropriate for the IP to hold the Licence by way of Transfer."

52. Arun District Council added that: "The period of time should be longer as in our experience almost all Interim Authority Notices are transferred to the same company after two months. In no cases that we know of has the licensed business passed to a more permanent and stable status within two months."

53. Kuits Steinart Levy LLP also gave detailed reasons why they felt the change to two months was important: "By extending the Interim Authority period to three months, this will allow parties further time to make the necessary decisions as to the future of the licence(s) in question. It is our experience that Clients who have found themselves dealing with such a situation where an IAN is required are often faced with a multitude of decisions to make at a time which is undoubtedly often emotional. To extend the relevant period would give parties in such situations more time to cope with the practical implications which often result. In addition and as highlighted in the Consultation document, we agree that on a further practical point in terms of insolvency, this will also bring the rules on IAN's into line with the Insolvency Service's proposal to extend the maximum time limit for court sanctioned moratoriums on creditor action."

Concerns of Medway Council

54. Only one respondent, Medway Council, expressed concerns about a potential risk to public safeguards in certain circumstances. They nevertheless supported the proposal, saying: "We have had situations where the licensee died and the family were unable to put in an interim within the 7 days due to bereavement and making funeral arrangements. The licensed lapsed and this caused the family considerable distress as they had to close and reapply for a licence. We have also had companies who have gone into insolvency who did not apply for an interim in the prescribed timescales which then required them to reapply for a licence which has financial implications for them."

55. Their concerns were as follows: "It is our opinion that although the proposed changes to the IAN and RTs are good they may remove some necessary protections -The period from the licensees dying, incapacitated or made insolvent until they apply for an interim authority or reinstatement transfer does raise concerns as to the licensing objectives. It maybe those persons who are taking over responsibility from the licensees have limited knowledge of licensing act and therefore maybe operating in breach of the licence. Because an application has not been submitted the police and licensing authorities will be unaware as to what is going on with the premises/licensee to provide information and guidance."

The Government's Response to Medway's concerns

56. The risk that Medway describe is the period between the issuing of an IAN to the Licensing Authority (which will therefore be aware of the IAN) and the copy of the IAN being submitted and checked by the police.

Such a period already exists in the 2003 Act. The principle of this risk has, therefore, been accepted by Parliament in the special circumstances of a licence lapsing. It is recognised that the maximum length of this period will be extended by the current proposal in some circumstances. The Government believes that the regime under the 2003 Act continues to provide sufficient safeguards during a potentially longer period as it does under the shorter maximum period. In particular, the following safeguards remain in place during this period:

a) All of the conditions of the licence will continue to apply during the interim authority period and the consequence of breach is the same as usual (i.e. on conviction a prison sentence of up to six months, a fine of up to £20,000 or both).
b) Any sales of alcohol during the period between notification and police assessment of the IAN on crime and disorder grounds have to be supervised by a Designated Premises Supervisor. This individual is required to possess a personal licence, to have obtained an accredited qualification necessitating knowledge of the Licensing Act 2003, and to have undergone a criminal record check. (Under the Licensing Act 2003, the premises licence holder is commonly a business and not an individual. A premises licence holder may therefore be located a long distance from the licensed premises in question, for example, where a company's head office is in another city. This why the 2003 Act imposes a mandatory condition in respect of every licence, requiring the specification of a designated premises supervisor as the person making or authorising every supply of alcohol .)
c) The powers of search and entry (under s.97) and the police and magistrates' powers of closure (under s.160-170) apply in respect of the premises.
d) Interested Parties (including residents) and Responsible Authorities (such as the police) can apply to the Licensing Authority for review of the licence on grounds that are relevant to one of the four licensing objectives. (As stated above in paragraph 10, these include crime and disorder, and public nuisance, which includes noise nuisance).

57. The Government also notes that the issue of ignorance of the Act and its processes is not affected in any way by the current proposals, except perhaps in a positive way in that more time will be afforded for those unfamiliar with the system to learn about and become accustomed to it.

58. It should be recognised that, in common with the other respondents, the representatives of the police who responded to the consultation did not raise concerns about this proposal. In particular, ACPO supported the proposal. The Government therefore believes that Medway's concerns are addressed by the 2003 Act, when considered as a whole, and will be writing to the authority to offer reassurance.

Concerns of Birmingham City Council

59. One local authority Birmingham City Council, whilst supporting the proposal as a whole, considered that the extension to three months might be unnecessary: "It is important to remember the premises licence will lapse immediately and remain so until an interim authority notice has been served. Whilst it is agreed that the existing notice period of one week is too short, the existing two months should be a sufficient period to enable the premises to identify suitable alternative arrangements."

The Government's response

60. The Government believes that the fact that the two month period is sufficient in most cases does not mean that it will always be so. Some examples were given by other respondents and are quoted above. No potential risks or problems have been identified associated with this extension.

61. A small number of respondents thought that the proposal could go further (for example, with even longer periods for notification or application).

62. The consultation invited comment on the proposed Statutory Guidance and Impact Assessment, but no substantive criticisms were received with regard to these proposals in those documents.

Extension of period for police objection to IANs from 48 hours to two working days

63. In a similar way to the proposals on TENs, the extension of the police objection period for IANs will ensure that the safeguards intended by Parliament are in place, by ensuring that the police have two working days to consider crime and disorder issues. In the Secretary of State's view this slightly more generous timescale for police objections assists in achieving a fair balance between persons who may be affected and the identified public interest.

64. Kent Police agreed with this point and commented that "Currently, problems can arise with notifications falling late on a Friday or otherwise out of time. The proposed changes allow time to fully consider the application."

65. The Newcastle upon Tyne Licensing Authority says that: "one of the most difficult issues with the use of IAN's is with the 'failure' and sometime 'abuse' of the notification process to the police. As indicated in the Consultation, the more ' adapt' (sic) Solicitors, will submit copies of the more sensitive IAN's to 'satellite' Police Stations, including a Headquarters building where the Police Licensing officer is not based, on say a Friday evening at 5pm before a Bank Holiday Monday, thereby fully expiring the 48 hour period for the Police to cancel the IAN. Any 'relaxation' of the strict timetable around this particular aspect of the use of IAN is therefore to be welcomed and is an overly more sensible approach to their use from the viewpoint of the Licensing Authority and we would suggest the Police."

Concerns of JGR Solicitors and Incorporated Society of Musicians

66. Only JGR Solicitors and the Incorporated Society of Musicians (ISM) expressed concerns on this point. JGR suggested that this part of the proposal should be replaced by the addition of a statement in the Act that hours on a non-working day should not count towards the 48 hour period. Their argument is that 'to reflect the urgency of the matter, we believe the time period should still be counted in hours, but a compromise might be that hours on a non-working day should not be included". ISM agreed with the proposal but suggested that "Yes. We accept the need to reduce the regulatory burden on police authorities. However, this use must be monitored closely to ensure that the additional time given to the police is not abused."

The Government's response

67. JGR's suggested alternative is very similar to the proposal, which has been supported by the overwhelming majority of respondents, and would make little practical difference. ISM's concern is addressed by the fact that a police objection must be followed by a review, held by the licensing authority, before it results in cancellation of the IAN. This ensures that the police's power is not abused.

Pre-conditions

68. The 2006 Act specifies that any Order must satisfy certain preconditions. These are that the proposal: cannot be fulfilled by non-legislative means; is proportionate to the policy objective; provides a fair balance of public interest and the interest of those adversely affected; maintains necessary protections; does not affect rights and freedoms; and is not constitutionally significant. The consultation invited comment on whether the proposals met these preconditions and the only negative comments received were those from Medway Council (as mentioned in paragraphs 54-58 above in relation to IANs and RTs); Scarborough BC (paragraph 82 below); and JGR Solicitors (whose arguments are discussed in paragraph 38-39 and 66).

Non-legislative solutions

69. The timescales under which IANs can be issued or RTs applied for; and the period during which the police can object to a TEN; derive from primary legislation. They cannot be changed other than by legislative means. In addition, there are no secondary powers to change them other than the powers in the 2006 Act. As indicated above in the description of the proposals, the need for the extension of the TEN timescale from 48 hours to two working days arises not from an inherent aspect of the legislation itself, but from the way it operates in practice. The means of delivery of a TEN to the police are not precisely described in the 2003 Act, and nor are there any powers that would allow such a description to be enacted in ordinary secondary legislation. The Secretary of State has considered whether a non-legislative solution to the issue with TENs would have been possible. However, he is of the view that any such solution would inevitably be unsatisfactory in that it would either:

- require that other considerations in the deployment of scarce police resources be subordinated to ensuring the collection of TENs from otherwise unstaffed police premises on Fridays, weekends and bank holidays ; or
- if this were not the case, fail to provide a comprehensive solution to the problem and thus fail to ensure consistency in the application of the TENs provisions.

The amendment proposed, by contrast, will ensure consistency without the need to interfere with other police priorities.

Proportionality

70. The current proposals will involve no change to the established procedures for IANs and RTs and TENs, other than an extension of the timescales.

71. An extension of timescales has been chosen as the means to reform the reform the procedures because it corresponds to the concerns raised by stakeholders. In the case of IANs and RTs these are the difficulties encountered by people in vulnerable situations (such as surviving relatives or business partners) in dealing with formal processes within very short timescales. The consequences of not meeting these timescales can be severe – e.g. a business could need to cease trading, with consequent loss of income, until a new licence can be obtained. In the case of TENs, the police and some licensing authorities have asked us to ensure that the police always have the same amount of time to make a proper assessment of the risk of crime and disorder.

72. The degree of extension proposed for IANs and RTs is significant, but, in the Secretary of State's view, is in line with what is needed to meet the concerns raised. In the case of an IAN, the new 28 day period will be the new *maximum* time during which an IAN can be given. Until an IAN is given, the licence remains lapsed and cannot be used to authorise any licensable activities. After it is given the licence can be so used, but all of the safeguards normally applicable to a licence will apply (as noted above). In these circumstances it appears to the Secretary of State that 28 days is a sufficient period to allow for the difficult circumstances that may surround the giving of IANs, whilst ensuring that the option remains suitably time-limited. Similar considerations apply with respect to RTs under section 50.

73. The increase in the police objection period for TENs from 48 hours to two working days is a very small change to ensure a consistent approach regardless of when a TEN is given. The detriment to premises users and possible shortening of the timescale for a hearing a person submitting a TEN on a Thursday, Friday, weekend or Bank Holiday will, in the Secretary of State's view, be relatively modest. A premises user may have to wait for up to two additional days before being made aware of whether the police have objections on crime prevention grounds. But this can be avoided easily by ensuring that TENs are submitted on days

where the two working day timescale will make no difference to the objection period. And of course the overall waiting period of ten working days will not be changed. The timescale for holding a hearing to consider any police objections will, in such cases, be shortened by a corresponding amount. However, the Secretary of State considers that there will still be a sufficient opportunity, within the overall ten working day timescale for TENs, for hearings to be held where necessary.

Fair balance and Necessary Protection

74. In the Secretary of State's view, there is a strong public interest in ensuring that licensed premises remain as economically viable as possible following the death, insolvency or incapacity of the licensee, subject to appropriate safeguards. As mentioned above, the proposal does not affect the overall length of the timescale allowed for consideration, but rather limits the days on which the timescale is allowed to run, so as to align it better with standard working hours. As those giving TENs are able to (and should) plan for events in advance, the Secretary of State considers that it is a proportionate response to require them to factor working days into their planning, in order to achieve the benefits of proper and more consistent decision-making by the police.

75. There is also a public interest in maintaining the protections afforded to people living in the vicinity of licensed premises who may be affected by the licensable activities. This extends to the protection of the wider public who may be directly affected by alcohol related crime and disorder and public nuisance, the vulnerable, e.g. children; customers who may be at risk from inadequate or non-existent public safety measures in licensed premises; and society as a whole which is damaged by crime and disorder and public nuisance. More consistent decision-making in relation to TENs will, in particular, enhance the level of these protections in relation to temporary events.

76. The current proposals do not amend or remove any of the measures and protections offered under the Act, or under other legislation such as the Noise Act 1996, to deal with unforeseen problems which arise at a licensed premises. The Act continues to provide a mechanism for all interested parties and responsible authorities to call for a review of a licence at any time, in addition to the serious sanctions for breach of licence or certificate conditions (see section 136 of the Act) and the powers of the police in relation to the closure of premises (see Part 8 of the Act).

77. The Secretary of State is therefore of the view that the extension of the timescales proposed does not alter the balance between the public interest and persons who could conceivably be adversely affected. This balance is already established by the safeguarding mechanisms in the 2003 Act, which are to be left in place as they are.

78. In connection with TENs, the Secretary of State considers that the current balance between the interests of those who wish to hold events and the important interests protected by those charged with considering the crime implications of event proposals is not right, and that a better balance would be achieved by the proposal to allow two working days for police consideration. As mentioned above, those planning and organising events involving licensable activities can and should plan for them with an appropriate degree of care and concern for their possible effects. The police, on the other hand, have a reactive role within a very short timescale, and can come under considerable pressure due the varying numbers of notices received, means of delivery of the notices etc. The Secretary of State believes that requiring event organisers to plan around working days so as to give the police a better opportunity to scrutinise notices will result in a much better balance between these interests, and in particular between the interests of those running events and those who might suffer due to inadequate police time to scrutinise notices for possible concerns about crime and disorder.

79. In the Secretary of State's view similar conclusions follow in relation to necessary protections. The extension of the timescales provides more time for those concerned to consider whether or not they ought to use the IAN or RT procedures, but does not otherwise change the nature of the procedures or the criteria upon which decisions are based. Nor does it change the nature or application of the safeguards that may be invoked in the meantime by those who consider their rights or interests are being infringed by anything resulting from licensable activities on the premises concerned. Therefore, the Secretary of State does not consider that the IAN proposals would remove any necessary protection.

80. Likewise, the requirement that those giving TENs order their event planning around working days would, in the Secretary of State's view amount to a slight reduction in the flexibility available to them, but not to the removal of a necessary protection. On the contrary, the mechanism for protection of those who might suffer due to crime and disorder will be strengthened by the TENs proposal.

Rights and freedoms

81. The changes proposed will not prevent anyone from exercising an existing right or freedom that they might reasonably expect to continue to exercise.

Constitutional Significance

82. Only Scarborough BC thought that any of the proposals was of constitutional significance. They considered that the proposal to extend the police objection period for TENs to three working days would raise such issues. They said "with regard to TENS our key concern was to ensure sufficient time to deal with any appeals to police objections, the time scale is already fairly tight, preparing a Members Hearing obviously

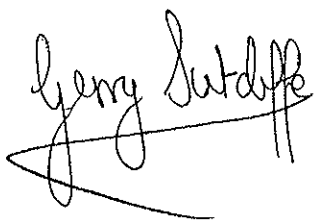
takes time."[1] The Government does not consider that the precondition relating to 'constitutional significance' is intended to refer to measures that might affect the working practices of a local authority's Licensing Committee. The Government is not in any case recommending an extension to three working days. This proposal is not constitutionally significant.

Compatibility with the European Convention on Human Rights

83. This proposal does not in any way curtail rights under the European Convention.

Compatibility with Obligations arising from membership of the European Union

84. The draft Order is compatible with obligations arising from membership of the European Union. The Licensing Act 2003 is currently compatible with those obligations, and the changes to be introduced by the Order will not affect this.



3 March 2010

[1] Quote is taken from Scarborough's response to a request for confirmation of their intention to object to the proposals on grounds of constitutional significance. In the initial consultation, they supported the extension to two working days, but objected to extension to three working days on the grounds that "Licensing Authority may be left with insufficient time to organise a Hearing".

Annex A

Summary of Consultation Responses

1) There were 74 responses received before the deadline. These included 35 responses from local authority bodies. Amongst these 35 one response was on behalf of 13 authorities and one response was from Local Authority Coordinators of Regulatory Services (LACORS). LACORS is a national organisation, which responded after having consulted its membership. The Association of Chief Police Officers (ACPO) likewise responded on behalf of the police. There were five further responses from police forces, and 15 responses from national trade or community organisations. The responses to each of the four key proposals can be summarised as follows:

Interim Authority Notices and Reinstatement on Transfer

2) The measures to allow more time to apply for IANs and RTs was **supported by all** who commented on them, with only minor qualifications from a handful of respondents. One local authority expressed concerns about public protection, but nevertheless supported the proposal. A few respondents thought that the proposal could go further.

Licensing Policy Statements

3) The measures to simplify requirements for licensing policy statements were generally supported, especially by local authorities and national trade associations. There was a mixed group of about a dozen dissenters whose concern was either:
   a) that LAs could not be trusted to keep their policies up to date and take local stakeholders into account **without periodic mandatory revisions**. (This generally led to complete opposition to the proposals); or
   b) that the mandatory three-year revision could or should be abandoned, but that **LAs should still have to contact the full list of mandatory consultees for all policy changes**, as they could not be trusted to recognise which stakeholders would be affected.

Temporary Event Notices: Police objection period

4) The proposal to change the period of police objection for Temporary Event Notices (TENs) from 48 hours to two working days met with almost **unanimous approval** from those who addressed the question. The alternative proposal for three working days received some support, but was generally opposed (by a mixture of LAs, trade representatives and community bodies;);

Temporary Event Notices: Police discretion to accept late TENs

5) The *principle* of introducing a system by which low risk late TENs could be accepted was supported by all but about 10 of the respondents. About 32 respondents, especially community organisations and the licensed trade, were supportive of our proposal as it stood. However, about 24 respondents, including a substantial proportion of individual councils and

licensing authorities, **were opposed to the details of our proposal**. An additional problem is that their concerns do not point towards a single compromise. The concerns included:

a. That the **circumstances in which the police might use their discretion are undefined**, and that this might cause a variety of problems. (Note, however, that the police are concerned that their discretion should be entirely unfettered, so that the system is not burdensome to them). In particular, the Association of Chief Police Officers is concerned that their discretion may be challenged even under the current proposal.
b. That **only certain kinds of late TENs should be accepted**. (Either that the user should have to provide reasons, or the event would have to be one that already had a TEN and needs to be rescheduled).
c. That **a police decision to allow a late TEN would not give LAs enough time to consider noise and public safety issues.** These issues are NOT formally part of the TENs process. Objections cannot be made against TENs on these grounds. However, LAs nonetheless do make their Environmental Health teams aware of events occurring under TENs.
d. **That licensing authorities should be in charge of the process**, rather than the police.

ANNEX B

Draft Amendments To Statutory Guidance issued under s.182 of the Licensing Act 2003

Paragraph 7.28 Change both references to 48 hours to *two working days* and remove sentence following first reference. ("This 48 hour period includes..").

Paragraph 8.97: Amend reference to 'seven days' to '28 consecutive days'; amend reference to 'seven day period' to 'period of 28 consecutive days'.

Paragraph 8.99: Amend reference to 'two months' to 'three months'.

Paragraph 100: Amend reference to '7 day period' to 'period of 28 consecutive days'. Amend reference to '48 hours' to 'two working days'.

Paragraph 8.102: Amend reference to '7 days' to '28 consecutive days'.

ANNEX C

List of respondents to the consultation

Swindon Borough Council
Ballards Brewery
Wiltshire Village Halls' Association
Roger Gall
Basingstoke & Deane BC
Bargain Booze
Copeland BC
Kensington & Chelsea Police
Russell Ellis
Association of Convenience Stores
Whaplode Drove Playing Field Association
Alan Caine
Glentworth Village Hall
Kent Police
Scarborough BC
Geoff Nancolas
Watford BC
London Borough of Croydon
Allington Village Hall
Canwick Village Hall
Birmingham City Council Licensing Committee
Central Council of Physical Recreation
Torbay Council
National Organisation of Residents' Associations
Working Mens' Clubs and Institute Union
East Northamptonshire Council
Suffolk Coastal District Council
Royal Borough of Kensington & Chelsea
Bournmouth Borough Council
Tewkesbury Borough Council
East & West Sussex Licensing Group (13 Local Authorities)
Action with Communities in Rural England
Business in Sport and Leisure
Musicians' Union
Sheffield City Council
Equity
Criminal Justice Department of Avon and Somerset Constabulary
Arun District Council
Amber Valley Licensing Committee
Wolverhampton City Council
London Borough of Havering
Hackney Police
East Devon District Council
British Hospitality Association
Kuit Steinart Levy LLP Solicitors
Historic Houses Association
Guild of Master Victuallers
Community Matters
Cornwall Council
British Beer and Pub Association
Herefordshire Council
Great Yarmouth Borough Council
City of York Council
LACORS
Leeds City Council
Wakefield Council
Jeffrey Green Russell Solicitors
Noctis
City of London Corporation
Poppleston Allen Solicitors
West Yorkshire Police
Hammonds LLP Solicitors
South Somerset District Council
Knowsley Borough Council
Medway Council
Milton Keynes Council
London Borough of Hackney
Salford City Council
London Borough of Hammersmith & Fulham
Incorporated Society of Musicians
Cardiff Council
Newcastle upon Tyne Licensing Authority
Association of Chief Police Officers

ANNEX D

List of consultees; members of the Licensing Advisory Group and former Minor Variations subgroup; and others notified of the consultation by the Department for Culture Media and Sport (an asterisk indicates a response was received)

Consultees:

Action in Rural Sussex
Action with Communities in Rural England*
Alcohol Concern
Arts Council in England
Arts Council of Wales
Association of Chief Police Officers*
Association of Circus Proprietors of Great Britain
Association of Convenience Stores*
Association of Directors of Social Services
Association of Inland Navigation Authorities
Association of Licensed Multiple Retailers
Association of Show and Agricultural Organisations
BII
British Beer & Pub Association*
British Board of Film Classification
British Holiday and Home Parks Association
British Hospitality Association*
British Marine Federation
British Retail Consortium
Business in Sport and Leisure
Campaign for Real Ale
Central Council of Physical Recreation*
Charity Commission
Chartered Institute of Environmental Health
Chief Fire Officers' Association
Children's Society
Chinese Takeaway Association UK
Cinema Exhibitors Association
Circus Arts Forum
Commission for Rural Communities
Committee of Registered Clubs Associations
Community Matters*
(DEFRA) Rural Communities Buildings Network
English Heritage
Dept. for Business, Innovation and Skills
Federation of Licensed Victuallers
Federation of Licensed Victuallers (Wales)
Federation of Private Residents' Association
Federation of Small Businesses
Federation of Wholesale Distributors
Fire and Rescue Authorities in England
Fire and Rescue Services in Wales
Greater London Authority
Guild of Bangladeshi Restauranteurs
Guild of Master Victuallers*
Historic Houses Association*
Independent Street Arts Network
Insolvency Service
Institute of Licensing
Interfaith Network
Justices Clerk Society*
Licensing Act Active Residents Network
Licensing Authorities in England and Wales*
Local Authorities Co-ordinators of Regulatory Services*
Local Government Association
London Councils
Magistrates Association
Maritime and Coastguard Agency

Musicians Union
National Association of Kebab Shops
National Association of Local Councils
National Campaign for the Arts
National Farmers' Retail & Markets Association
National Federation of Fish Friers
National Federation of Retail Newsagents
National Neighbourhood Watch Association
National Operatic and Dramatic Association
National Organisation of Residents Associations*
National Village Halls Forum
Noctis*
One Voice Wales
Open all Hours
Passenger Boat Association
Patersons Licensing Acts
Police Federation
Police Superintendents' Association
Rural Shops Alliance
Society of Local Council Clerks
Society of London Theatre and Theatrical Management Association
Tourism for All
Trading Standards Institute
United Kingdom Film Council
United Kingdom Warehousing Association
Voluntary Arts Network
Welsh Assembly*
Welsh Council for Voluntary Action
Welsh Local Government Association
Welsh Music Foundation
Wine Spirits Trade Association

Members of the Licensing Advisory Group and former Minor Variations subgroup (all invited to respond)

Action with Communities in Rural England*
Alcohol Concern
Arts Council
Association of Chief Police Officers*
Association of Convenience Stores*
Association of Licensed Multiple Retailers
BII
British Beer & Pub Association*
British Hospitality Association*
British Marine Federation
British Retail Consortium
Business in Sport and Leisure*
Chartered Institute of Environmental Health
Cinema Exhibitors Association
Dept. for Business, Innovation and Skills
Federation of Licensed Victuallers Association
Federation of Small Businesses
Guild of Master Victuallers*
Justices Clerk Society*
Local Authorities Co-ordinators of Regulatory Services*
London Borough of Havering*
London Councils
Royal Borough of Kensington and Chelsea*
Magistrates Association
Musicians Union*
National Organisation of Residents Associations*
Noctis* / Poppleston Allen Solicitors*
Patersons
Working Men's Club and Institute Union*

Others invited to respond

Association of School and College Leaders
National Association of Head Teachers
National Confederation of Parent Teacher Associations
The Insolvency Service

Summary: Intervention & Options

Department /Agency: Department for Culture, Media and Sport	Title: Impact Assessment of Proposal to amend the Licensing Act 2003 to simplify the procedures for Interim Authority Notices and Reinstatements on Transfer; and Temporary Event Notices	
Stage: Final	**Version:** 2	**Date:** Feb 2010

Related Publications: "Consultation on a proposal to amend the Licensing Act 2003 to simplify the procedures for Licensing Statements; Interim Authority Notices; and Temporary Event Notices" and "Impact Assessment of Proposal to amend the Licensing Act 2003 to simplify the procedures for Licensing Statements; Interim Authority Notices and Reinstatements on Transfer; and Temporary Event Notices" (Dec 2009)

Available to view or download at:

Contact for enquiries: Paul Nicol **Telephone:** 0207-211-6388

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

In general, the burdens imposed by the Licensing Act 2003 are justified by the need to prevent potential adverse impacts on the four licensing objectives: the prevention of crime and disorder; public safety; the prevention of public nuisance; and the protection of children from harm. However, stakeholders have identified the detailed requirements of the Act with regard to the procedures for Interim Authority Notices and Reinstatements on Transfer; and the police objection period for Temporary Event Notices (TENs) as being unduly restrictive and burdensome. The Government therefore agrees that these procedures be simplified, as described in the Consultation Document.

What are the policy objectives and the intended effects?

To continue to promote the licensing objectives whilst removing unnecessary burdens on stakeholders including licence holders and their relatives and business partners.

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

Licensing authorities, the police, and representatives of licence holders have been asking us to review and revise the procedures concerned for some years. These proposals for delivering simplified procedures have been developed in consultation with our stakeholders.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? We will review these policies in Spring 2013, three years after implementation.

Ministerial Sign-off For final stage Impact Assessments:

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

Signed by the responsible Minister:



Date: 3 March 2010

Summary: Analysis & Evidence

Policy Option:	Description:

COSTS

ANNUAL COSTS	Description and scale of **key monetised costs** by 'main affected groups'
One-off (Transition) **Yrs**	
£0	
Average Annual Cost (excluding one-off)	
£None	**Total Cost** (PV) 10 years **£ none**

Other **key non-monetised costs** by 'main affected groups'

BENEFITS

ANNUAL BENEFITS	Description and scale of **key monetised benefits** by 'main affected groups' Benefits to stakeholders licence holders and their relatives and business partners through increased time in which to issue an IAN or apply for an RT.
One-off **Yrs**	
£0	
Average Annual Benefit (excluding one-off)	
£5.52m-10.52m	**Total Benefit** (PV) **£ 45.9m-87.5m**

Other **key non-monetised benefits** by 'main affected groups' Removal of need to apply for IAN or RT (see below) within 7 days of bereavement. Benefits to the police and to the licensing objective of the prevention of crime and disorder through the full two days being made available to the police for all TENs.

Key Assumptions/Sensitivities/Risks

Price Base Year 2009	Time Period Years 10	**Net Benefit Range** (NPV) **£45.9m-87.5m**	**NET BENEFIT** (NPV Best estimate) **£ 66.7m**

What is the geographic coverage of the policy/option?				England and Wales
On what date will the policy be implemented?				April 2009
Which organisation(s) will enforce the policy?				LAs and police.
What is the total annual cost of enforcement for these organisations?				None
Does enforcement comply with Hampton principles?				Yes/No Yes
Will implementation go beyond minimum EU requirements?				Yes/No No
What is the value of the proposed offsetting measure per year?				£ N/A
What is the value of changes in greenhouse gas emissions?				£ N/A
Will the proposal have a significant impact on competition?				Yes/No No
Annual cost (£-£) per organisation (excluding one-off)	Micro £0	Small £0	Medium £0	Large £0
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices) (Increase - Decrease)

Increase of Decrease of £172K - £564K Net Impact £ - £172K- £564K

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

Interim Authority Notices (IANs) and Reinstatements on Transfer (RTs)

Cost and frequency

Frequency

We received estimates from 20 Licensing Authorities (LAs) for the number of times in any 12 month period that IAs are submitted or RTs applied for after the seven day deadline has expired. Weighted[2] to apply to the total population of 378 LAs in England and Wales, this provides us with an estimated total of 329 late IANs and RTs per year. However, it must be assumed that those that are actually submitted late are only a proportion of those affected by the seven day deadline. It is likely that many potential notices and applications are *not* submitted because the applicant is aware they have missed the 7 day deadline. We will therefore assume that the total number affected is 1.5-2 times higher than this estimate. Based on this assumption, we estimate that **494-658** premises may benefit from our proposals annually.

Costs

Savings on licence fees

To continue the provision of licensable activities, a premises would have to apply for a new licence where no valid IAN or RT is in place. The fee for new licence applications ranges from £100 to £1,905 (based on non-domestic rateable value). A small proportion of premises are exempt from paying a fee (and we assume these are Band A premises). Assuming that these premises were all able to submit valid applications for IANs and RTs (with no need to apply for a new licence) under the proposed simplification measures, the result would be an estimated annual savings on fees across England and Wales of **£110K - £147K**

	Proportion	Scaled up estimate, Number	Low estimate, Number	High estimate, Number	Licence Application Fee	Low estimated savings	High estimated savings
Number with no fee applicable (Assume all Band A)	7.2%	23.8	36	48	£0	£0	£0
Band A (fee paying)	16.7%	55.1	83	110	£100	£8,264	£11,019
Band B	53.4%	175.7	264	351	£190	£50,086	£66,782
Band C	12.4%	40.9	61	82	£315	£19,333	£25,777
Band D no multiplier	2.8%	9.1	14	18	£450	£6,126	£8,168
Band D with multiplier	0.4%	1.2	2	2	£900	£1,572	£2,095
Band E no multiplier	6.6%	21.9	33	44	£635	£20,815	£27,754
Band E with multiplier	0.4%	1.4	2	3	£1,905	£3,913	£5,217
Total	**100.00%**	**329**	**494**	**658**		**£110,109**	**£146,811**

Administrative Savings

The range of possible additional administrative costs in applying for a new licence (excluding fees) is £385 - £950[3]. Assuming that the proposed simplification measures allows enough time for all 494-658 businesses to make valid applications for IANs and RTs, we estimate that there would be further savings of **£190K - £625K**.

[2] Es submitted or RTs applied for after the seven day deadline had

[3] "Legislative reform orders: proposals to: (1) Introduce a simplified process for minor variations to premises licences and club premises certificates and (2)

Savings on Lost Turnover

The British Beer and Pub Association (BBPA) estimate that a 'typical pub' could have a turnover ranging from £250,000 to £350,000 per year. However, many premises will fall well below this and others will be more profitable. In particular, evidence from lawyers indicates that the vast majority of IANs and RTs result from insolvency. Premises requiring an IAN or RT due to insolvency are likely to have a smaller turnover than that of the typical pub. We will therefore reduce this estimate by half to take account of these failing businesses, leaving an estimated turnover of £125,000 – £175,000, or a weekly turnover of £2,403 - £3,365. The process of applying for a new licence takes at least four weeks, but can be substantially longer (around eight weeks) for applications that result in hearings. However, applications for licences similar or identical to licences that have lapsed are unlikely to result in hearings. We will assume that around 10% of the applications involve hearings, meaning an average of 4.4 weeks of lost business. Therefore, the estimated cost in lost turnover to a single business would range from £10,600 - £14,800. The estimated number of affected premises is 494-658, implying an estimated saving of lost turnover to businesses of £5.22m - £9.74m.

Typical pub turnover	£250,000 - £350,000
Av. turnover of premises inc. "failing" pubs assumed to be half	£125,000 - £175,000
Weekly turnover of these premises	£2,403 - £3,365
Lost turnover over 4.4 weeks of lost business	£10,600 - £14,800
Lost turnover over 4.4 weeks for 494 to 658 premises	£5.22m - £9.74m

Estimated savings for businesses	
Savings on licence fees	£0.11m - £0.15m
Administrative savings	£0.19m - £0.63m
Savings on lost turnover	£5.22m - £9.74m
Total Savings	**£5.52m - £10.52m**

Total estimated savings from Proposal B; IANs and RTs; is £5.52m - £10.52m

Extension of period for police objection from 48 hours to two working days

ACPO have estimated that there are around 4,800 TENs annually that they currently do not have time to assess on crime and disorder grounds because of the current maximum period of two working days. The proportion of TENs that are currently cancelled because of police objections on crime and disorder grounds is very low. Of 123,400 TENs in 2008-09, only 200 resulted in counter notices following police objection. There were also 1,100 TENs withdrawn by the premises user. Such withdrawals could occur for any reason, such as the event merely being cancelled due to a lack of interest. Premises users may well wish to avoid an event that was not occurring counting towards their statutory limits. However, it is likely that some of these TENs are withdrawn because the premises user decides that potential or actual police objections are insurmountable. If we assume this applies to a maximum of half of the withdrawn TENs, we have a range of 200-700 TENs cancelled because of police objection. This is 0.16%-0.57% of total TENs. If the same totals apply to the TENs that are currently non-assessed, then there will be around 8-27 additional TENs cancelled due to police concerns. Using the same estimates for the profit made from a typical TEN used above, this results in additional total estimated annual costs to users of £8K-£61K. However, this is not a genuine 'burden' on premises users, as these are events that, if properly assessed by the police, should not be going ahead. If such an event went ahead, and there was crime and disorder, the costs would very likely be higher than the benefits. We will therefore disregard this small notional cost.

Specific Impact Tests: Checklist

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

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

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

Competition Assessment

We do not believe that the proposed policy is likely to raise any competition concerns. It will not directly or indirectly limit the number or range of suppliers, limit the ability of suppliers to compete or reduce suppliers' incentives to compete vigorously.

Small firms impact test

These proposals will provide the same benefits to firms of all sizes. It will result in administrative savings for small businesses in common with others and there is no reason why it would have a negative impact on small businesses.

Rural Proofing

Action with Communities in Rural England (ACRE) is a member of our stakeholder group and has supported these proposals

Health Impact Assessment Screening

This proposal does not change any element of licensing policy, only the details of the timescales for certain applications and notifications.

We have considered that the policy will not have:

- **a significant impact on human health by virtue of its effects on the following wider determinants of health:** Income, Crime, Environment, Transport, Housing, Education, Employment, Agriculture or Social cohesion.
- **a significant impact on any of the following lifestyle related variables:** Physical activity, Diet, Smoking, drugs, or alcohol use, Sexual behaviour, Accidents and stress at home or work.
- **a significant demand on any of the following health and social care services:** Primary care, Community services, Hospital care, Need for medicines, Accident or emergency attendances, Social services, Health protection and preparedness response

The Draft Legislative Reform (Licensing) (Interim Authority Notices etc.) Order 2010

Licensing Act 2003

Sections 47, 48, 50 and 104 (with proposed amendments underlined; [existing text in square brackets])

PART 3

PREMISES LICENCES

...

Interim authority notices

47 Interim authority notice following death etc of licence holder

(1)

(a) a premis

(b) no application for transfer of the licence has been made by virtue of section 50 (reinstatement of li

(2)

(a)

(b)

28 day

(3)

(a) section 54 (form etc of notices etc);

(b) section 55 (fees to acc

(4)

(5)

(a) the former holder has died and that person is his personal

(b) Mental Capacity Act 2005) to hold the licence and that person acts for him rney

or

(c) the former holder has become insolvent and that person is his

(6)
section

(a) the premises licence is reinstated from the time the notice is received by the relevant licensi

(b)

(7)

(a) at the end of the initial seven day 28 day period unless before that hority notice has given a copy of the notice to the chief officer of police for the police area

(b) relevant transfer application is made to the relevant licensing

(7A)
authority by means of a relevant electronic facility

(a)

(b) the relevant licensing authority notice to the chief officer of police for the police area (or each

(8)

(9) If

(a) a relevant transfer application is made during the interim authority

and

(b)

(10) In this section

after the day the licence lapses;

day the licence lapses;

as section

388 of the Insolvency Act 1986 (c 45));

authority and ending

(a) three months

(b)

authority notice notifying the relevant licensing authority to that effect;

and

"relevant transfer application" in rel

48 Cancellation of interim authority notice following police objections

(1)

(a) an interim authority notice by a person ("the relevant person") is

(b) the chief officer of police for the police area (or each police area) in

authority notice before the end of the initial seven day 28 day

(c) that chief officer (or any of those chief officers) is satisfied that the

cancel the interim authority n

(2) The chief officer of police must no later than 48 hours after before the end of he receives the copy of the interim authority notice give the rele

(3)
authority must

(a)

person and the chief officer of police agree that a hearing is

(b)

cancel the interim authority notice if it considers it necessary for

(4) An interim authority notice is cancelled under subsection (3)(b) by the licensing authority giving the relevant person a notice stating that it is cancelled

(5) The licensing authority must give a copy of a notice under subsection (4) to

(6)

5) of Schedule 5 (reinstatement of premises licence

(7) The relevant licensing authority must not cancel an interim authority notice
ing of section 47) is made in

Transfer following death etc of licence holder

50 Reinstatement of licence on transfer following death etc of holder

(1)

(a) a premises licence lapses by virt

(b)

(2) ases to

(3)

section 42 for the transfer of the licence to him provided that the application

(a) is made no later than seven days 28 days after the day the licence

(b)

(4) ion

(5)

(6)

(a) the applicant is n

(b)

(7)

Part 5

PERMITTED TEMPORARY ACTIVITIES

Police objections

104 Objection to notice by the police

(1) The premises user must give a copy of any temporary event notice to the

(1A) the premises user gave the temporary event notice to the relevant licensing authority by means of a relevant electronic facility

(a)

(b) the relevant licensing authority must give a copy of the notice to the relevant chief officer of police no later than the end of the first

(2) py notice under subsection (1) or (1A) is satisfied t

(a)

(b) to

(3) no later than 48 hours after before the the chief officer of police is given a copy of the temporary event notice under subsection (1) or (1A)

(4) Subsection (2) does not apply at any time after the relevant chief officer of police has received a copy of a counter notice under section 107 in respect of the

(5) In this section "relevant chief officer of police" means

(a)

(b)