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ODPM: Housing, Planning, Local Government and the Regions Committee

Re–licensing

Second Report of Session 2005–06

Report, together with formal minutes, oral and written evidence

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The ODPM: Housing, Planning, Local Government and the Regions Committee

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Summary

The Licensing Act 2003 brought ten existing licensing schemes administered by local authorities into one new regime, created more flexible licensing hours, and introduced additional powers for local authorities and the police to deal more effectively and expeditiously with licensed premises causing trouble. It was passed amid an increasingly heated public debate about the consequences of '24 hour drinking'.

This Report however concentrates on the technicalities of licensing under the Licensing Act. All those either applying for a licence for the first time or needing a new licence under the Act had to submit applications by a certain date. In theory, this should have simplified matters.

The transition period from old to new licensing systems was in 2005. It soon became apparent that people involved in all areas of the 'relicensing' process were encountering difficulties. In our view, the Department for Culture, Media and Sport (DCMS) has failed to administer the transition period effectively.

Regulations and guidance were issued too late, despite a two year gap between the passing of legislation and the implementation of the Act, and, when received, were confusing and contradictory. Local authorities were unable to train staff or prepare application materials in good time. There was inadequate support from central government for local authorities as they dealt with applications and appeals. The ODPM did not give visible assistance to local authorities coping with the transition period.

Many licensing fees rose dramatically, leading to concerns that some small businesses might abandon their licensable activities. The fees imposed unreasonable burdens on community facilities with limited funds. At the same time, there were doubts that the new regime would be self-funding: despite fees set at high levels, some local authorities fear ending up out of pocket with no clear means of funding the system.

Reviews have already been set up to look at both fees and guidance – we hope that this Report can inform both.

The regulatory burden on residents, licensees and local authorities appears to have increased. This will in some cases be eased once the new system is running. It is not obvious however that Government has recognised some of the issues hindering the smooth operation of the Act. Overly-prescriptive regulations and unhelpful constraints on local government structures are both causing difficulties.

1 Introduction

The Licensing Act 2003

1. Reform of the licensing laws was a manifesto commitment of the Government in the last two elections. In 2000, a White Paper, *Time for Reform: proposals for the modernisation of our licensing laws,* was published, and the Licensing Act was passed in 2003. However, the Act did not come into force until 24th November 2005. It was intended to give additional powers to those regulating licensed premises, and more flexibility for licensees and customers. It brought together, and extended, the existing licensing systems formerly incorporated in ten different pieces of legislation, covering:

a) alcohol;

b) public entertainment;

c) theatre;

d) cinema;

e) night cafes; and

f) late night refreshment houses.

2. Those who required licences to operate under the Act had two deadlines to meet. The application period began in February and the deadline for submitting an application to renew an existing licence was 6th August 2005 (the First Appointed Day). Any licensee who had not applied at this point would be treated as a new applicant, losing their 'grandfather rights'.[1] All premises wishing to trade with a licence needed to have that licence by the date of final implementation of the Act (the Second Appointed Day), set as 24th November 2005.

The Committee's Work

3. The Committee in the previous Parliament had looked twice at the Licensing Act, as part of its inquiries on the Evening Economy.[2] In October 2005, we became aware that many of those involved were experiencing problems with the process of issuing new licences under the Act. Given our prior interest, we felt that a short report on this subject would provide an opportunity for those involved to put their views in the public domain. Although the period in which licence applications were made and processed was referred to by those involved as the transition period, we used the term 're-licensing' as the title of our inquiry as it had been used across the media to describe the process.

[1] 'Grandfather rights' is the term used to signify that the licence applicant is an existing licensee, and has already gone through the processes a first time licencee must undergo.

[2] *The Evening Economy and the Urban Renaissance,* Twelfth Report of the ODPM Committee, Session 2002-03 (HC 396); *The Evening Economy and the Urban Renaissance: a follow-up*, evidence taken before the ODPM Committee, Session 2004-05 (HC 456).

4. We announced our inquiry on 13th October, and held our evidence session on 31st October. We received 20 pieces of written evidence, and took oral evidence from:

- the Federation of Small Businesses;
- the Association of Licensed Multiple Retailers;
- Councillor Audrey Lewis, Chair, Licensing Sub-Committee, Westminster City Council;
- Mr Andrew Fisher, Head, Licensing Unit, and Tony Kelly, Project Manager, Bolton Metropolitan Borough Council;
- Councillor Chloe Lambert, Deputy Chairperson, and Mr Patrick Crowley, Adviser to the Local Authorities Co-ordinators of Regulatory Services (LACORS), Local Government Association;
- Mr Philip Kolvin, Chair, and Mr Jeffrey Lieb, Vice-Chair, Institute of Licensing;
- James Purnell MP, Minister for Media and Tourism, Department of Culture, Media and Sport, and
- Phil Woolas MP, Minister of State for Local Government, Office of the Deputy Prime Minister.

We are very grateful to all those who gave evidence to this inquiry.

The Elton Review

5. The Licensing Act 2003 Fees Regulations came into force in February 2005. In May 2005, the Department of Culture, Media and Sport (DCMS) announced an Independent Licensing Fees Review Panel, headed by Sir Leslie Elton, with the following terms of reference:

to:

a) consider whether the fees cover the full cost to licensing authorities;

b) identify the scale, extent and nature of any problems encountered by licensees/licence payers and licensing authorities;

c) make recommendations about how the existing fee structure and levels could be developed, and

d) ensure best practice is being fully realised across all authorities.

The Review is due to report its findings in autumn 2006.

6. In December 2005 an interim report was published, which covered many of the areas we looked at during our inquiry and made interim recommendations.[3] Many issues were of such concern to local authorities, licensees and residents that it was inevitable both

[3] http://www.culture.gov.uk/alcohol_and_entertainment/monitoring_and_evaluation/ifreview.htm

inquiries would seek to address them. We agree with many of the Elton Review interim recommendations, and have made it clear when our views coincide, but our Report also looks at wider issues not covered in the Review. **We look forward to the final report of the Independent Licensing Fees Review Panel and expect that our Report will be of use to the Review.**

2 Timescale

Timescale

7. All licensable businesses and activities were required to gain new licences under the 2003 Act. Those applying for licenses had six months in the first instance to apply, from February to 6th August 2005 (the First Appointed Day). Some evidence suggested that this was an inadequate timeframe for such an exercise. The Licensing Act 2003 Fees Regulations were not laid until 13th January 2005.[4] This was eighteen months after the Act was passed. The Regulations only came into force in February 2005, at the beginning of the six month transitional period. Two weeks *after* the transition period began, on 22nd February 2005, the Regulations were amended.

8. There can be little doubt that the late laying of the Regulations severely hampered local authorities in their attempts to write clear licensing policies in line with guidance. As the British Beer and Pub Association told us

> "Councils were obliged to publish their licensing policies by 7th January 2005, before either the licensing regulations or the level of fees had been laid before Parliament. It is hardly surprising that some of these policies were, and still are, inaccurate and misleading. These problems are still working their way through the system".[5]

Inadequate preparation time

9. Witnesses were highly critical of what they perceived to be the rushed manner in which the Government brought forward regulations. The Local Government Association (LGA) and the Local Authorities Coordinators Of Regulatory Services (LACORS) told us

> "The regulations were not laid until 13th January 2005, 18 months after the Bill was passed and just over three weeks before applications could start. This left councils with very little time to develop procedures, train staff and publicise the requirements".[6]

Others told us that material arrived so late from the Government that they were unable to prepare adequately. Councillor Lewis, of Westminster City Council, said "it was impossible for licensing authorities to plan properly. Westminster's plans for a 'phased' receipt of applications were disrupted and had to be abandoned because of the late publication of Regulations".[7] The Association of Licensed Multiple Retailers (ALMR) told us "the short timescale between regulations being published and commencement of the transition period led, in our opinion, to a lack of clear understanding of the application of law by some licensing authorities and their legal officers".[8] On a practical level, Bolton Metropolitan Borough Council stated "The very late release of forms and regulations

[4] SI 2005/79

[5] Ev 46

[6] Ev 43

[7] Ev 48

[8] Ev 38

created difficulties for licensing authorities and delayed the implementation of and training on essential software systems and delayed the issuing of application packs".[9]

10. The British Beer and Pub Association stated

> "once the Government could see that the Regulations to the Act were not going to be released in sufficient time, the 1st Appointed Day should have been delayed. This was the recommendation from the Advisory Group and specifically supported by the LGA and ourselves and other trade bodies. Delaying the 1st Appointed Day would have had no discernable disadvantages and would most definitely have avoided many of the problems faced both by the trade and local authorities".[10]

The First Appointed Day was not moved. As we took evidence on this subject, there were repeated calls for the Second Appointed Day to be delayed, which the Government resisted.

11. **We are not convinced that a longer period for applications was needed, but consider the administration of the process within this time to have been lacking to the extent that applicants were disadvantaged, and local authorities put under unnecessary strain. The First Appointed Day could have been delayed once it was clear that the Regulations would be laid so close to the start of the six month transition period; inflexibility regarding the date of implementation is unproductive if the required legislation cannot be produced in a timely fashion.**

Two month decision period

Refusals

12. The Appointed Days were not the only deadlines facing local authorities. All licence applications made by 6th August had to be decided by councils within two months. This caused real difficulties for some authorities.[11] Councillor Lewis told us "Approximately 140 [applications] could not be determined within the period of two months allowed by the Act and accordingly were deemed to be refused. The volume of applications was such that it was necessary to devise a system of prioritising applications to be dealt with".[12] This was clearly not desirable and authorities were not happy with this outcome. Nor were magistrates, who faced appeals from those whose applications were deemed refused. This was one of the issues that the Magistrates' Association brought to our attention.[13] Applications solely for conversion of licences were deemed to be granted if not examined within two months. This lack of scrutiny was also undesirable. **Imposing a two month time limit on licence application decisions without any flexibility to allow for the volume of applications was unrealistic. The Government should not impose time limits of this sort again without adequate provision for change if necessary.**

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[9] Ev 40

[10] Ev 48

[11] Licensing Act 2003, Schedule 8, paras 4(4) and 7(3)

[12] Ev 48

[13] Ev 44-45

Mediation

13. A real issue for many was the lack of opportunity for mediation that the two month time limit provided. The Wine and Spirit Trade Association were critical that no mediation process had been built into the process from the start:

> "We believe a mediation function should have been established from the start to deal with potentially contentious applications to avoid costly hearings at full committee – the large number of hearings that have had to take place has slowed down the whole implementation process for licensing authorities and the trade".[14]

14. The Institute of Licensing told us "This truncated timescale, particularly for holding hearings, severely limits the possibility of holding meaningful negotiation and mediation between applicants and objectors — which is one of the key features that the Act was designed to introduce".[15] The lack of opportunity for mediation was damaging all round, as Mr Nick Bish, of the Association of Licensed Multiple Retailers, pointed out: "licensees want to serve the community in which they operate and it does them no favours to be cast as the villains of the piece, mostly in the press, when something goes awry…Let everybody have a fair go at this and in fact, the longer the time, the greater the time for mediation".[16]

15. The Government in its memorandum mentions how effective the mediation process can be:

> "Local authorities tell us that, of the applications to vary licences, around half have attracted representations from 'responsible authorities' or 'interested parties', with residents accounting for 50 per cent of representations. In two-thirds of cases representations have been resolved through mediation avoiding the need for hearings".[17]

This however only accounts for license variations, not for all applications. We asked James Purnell MP, Minister for Media and Tourism, whether adequate time could be allowed for decisions, to ensure that mediation would be possible. He was open to the idea of reviewing it, telling us "we are happy to look at the timescales".[18] **We urge the Government to introduce a mediation procedure into the process, in order to foster better relations between licensees and residents, to reduce the burden on magistrates' courts and to minimise the cost to applicants. It is disappointing that the two month deadline on decisions imposed during the transitory period may have prevented successful mediation in some cases.**

Concentrated Applications

16. Although applicants had six months in which to apply for their licences before the First Appointed Day, the majority of licence applications were received towards the end of this

[14] Ev 30

[15] Ev 36

[16] Q 18

[17] Ev 54

[18] Q 101

period. The Institute of Licensing referred to "an avalanche" of applications near the deadline.[19] The Corporation of London told us: "the timetable has been very demanding for licensing authorities with most applications being submitted in a very short period before the deadline at the end of July and the start of August".[20] The Local Government Association (LGA) and LACORS estimated that 120,000 applications were received in the last two weeks of the period.[21] Councillor Lewis, of Westminster City Council, told us that 40 per cent of the 2,317 applications made in Westminster were made in the final week.[22]

17. It is not hard to see why this happened. There is always a tendency for people to leave such applications to the last minute, but this was exacerbated by other factors. The reason given most often by witnesses was the renewal scheme. A licence will be renewable one year after the date of application. Given that many of those applying for conversion licences already had paid-for current licences, there was no incentive to apply earlier and face paying more than necessary. The British Institute of Innkeeping suggested "One of the causes for late submission was the lack of financial incentive. There was no discount for early payment in transition – so what about offering a discount for early payment in 2006 and beyond?"[23] Councillor Lewis agreed that an early payment incentive was needed.[24]

18. The initial application period is of course over. Nevertheless, local authorities now face intense renewal periods every July and August. If the system remains the same, there is no incentive at all for applicants to spread their renewals across the year. The Elton Review interim report recommended that an Annual Day be set for the paying of fees. While this would have advantages for both licensees and local authorities, it would result in some licensees paying renewal fees too early, and therefore a financial penalty for some. Therefore, some sort of recompense for those affected would be needed. If this could be done, we believe that the Review's suggestion of an Appointed Day would be the most sensible option, allowing local authorities to plan adequately and applicants to be clear about timing of payments. **We agree with the Elton Review's suggestion that an Annual Day for the payment of fees be established, although we do not wish to see licensees suffer financially from such an arrangement. Licensees who would be substantially disadvantaged by the introduction of an Annual Day should receive a pro-rata rebate of the first year's fee.**

[19] Ev 35

[20] Ev 39

[21] Ev 41

[22] Ev 50

[23] Ev 32

[24] Q 33

3 Fees and Funding

Licence Fees

19. Those holding licences must pay a fee. The fee for a premises licence under the old regime was £30, payable every three years. The Act retained the premises licence and also introduced the personal licence – operators must hold both. The fee for a premises licence for a property in Band B, for example, is now £190 for the first year, and £180 per year thereafter. The personal license attracts a fee of £35 for ten years. The fee costs have therefore increased by at least 18 times for most applicants. Understandably, this increase attracted large numbers of complaints from applicants.

Temporary Event Notices

20. We also heard about confusion regarding 'Temporary Event Notices' (TENs). These are used in place of a licence for a potentially licensable event that will only occur for a short period. There seems to be inconsistency between local authorities in applying this rule. Some require TENs for activities others consider fully licensable, or not licensable at all. There is confusion in some areas about which activities require a TEN and which need a permanent licence. Mr Andrew Fisher from Bolton Metropolitan Borough Council told us

> "An incident has occurred recently in Bolton where a group has taken the temporary event notice route and wishes to perform a play, but they want the play to run for five or six nights during the course of a week and of course that cannot be covered by one temporary event notice. They will either have to have a break in the middle of that and apply for two temporary events notices or go for a full premises licence. So I think it is an area where it has caused some problems".[25]

The potential costs of the TEN system were raised in the Government's memorandum: "Touring circuses: concerns that, as they need a licence for each site, this could mean they need to apply for 40+ licences. They believe this threatens the viability of all but the biggest circuses and is unfair as static attractions only have to obtain one licence".[26] This concern is valid for all types of entertainment that require TENs.

21. The Network of Residents' Associations raised the concern that objections to a TEN can only be made by police.

> "These events comprise farmers' markets, church fetes as well as events that can last continuously for 96 hours for up to 499 people. The legislation restricts control of these events to the police, who can only object on the grounds of only one of the four licensing objectives, that is the "prevention of crime and disorder". Residents likely to be affected by events that continue after 11 pm have no right to express their

[25] Q 31

[26] Ev 55

> concerns. This matter is currently under consultation with the DCMS and we await its conclusions".[27]

Given that the new licensing regime was intended to increase the participation of residents in the process, it seems an oversight that they have no rights of representation in the matter of TENs. **We expect the DCMS to iron out the inconsistency that prevents residents from objecting to Temporary Event Notice applications.**

22. Shortly before our evidence session, Mr Peter Luff MP introduced a Ten Minute Rule Bill on the subject of TEN licensing for circuses.[28] We asked James Purnell MP, Minister for Media and Tourism, about circuses and other events requiring temporary event notices. He told us that the DCMS was actively looking at this area:

> "In the case of circuses, for example, we changed a second point [in the guidance] today to reflect their concerns. People have made a number of requests to us in terms of being flexible about the guidance, all of which we have responded to whenever we have been able to do so. The village halls made some requests to us, consulted on the limits on the numbers of temporary events notices. To be fair, people would say that where we have been able to be flexible within the constraints of primary legislation, we have sought to be so".[29]

We are concerned that the handling of Temporary Event Notices by local authorities appears to be poorly co-ordinated. We welcome the inclusion of the subject in the Elton Review and recommend that the system be revised to ensure consistency and fairness.

Flat Rate Fees?

23. The licence fee regime is run along similar lines to business rates. That is, that premises are grouped in five bands, from A to E, based on their rateable value.[30] This reflects an attempt by Government to levy fees reflecting the size and nature of the business. However, as the FSB points out

> "the first bracket of rateable value runs from £4000 to £33,000. The difference between the two values is large. To charge the same price for one business with a rateable value of £4000 and another with a rateable value of £33,000 is not properly representative or cost-reflective. To put this into context, firms with 1-2 employees spend 4 per cent of annual turnover on compliance and businesses with under 20 employees experience compliance costs that are 35 per cent higher than firms with over 50 staff".[31]

24. Some small businesses are entirely involved in licensable activities, whereas some need a licence only for peripheral activities. Many small businesses who do not draw the majority of their profits from their licensable activities feel that they are paying

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[27] Ev 25

[28] Licensing Act 2003 (Amendment) Bill, HC Deb, 25 October 2005, col 189

[29] Q 79

[30] The full fees are set out in the Licensing Act 2003 (Fees) Regulations 2005 (SI 2005/75)

[31] Ev 22

disproportionate fees. The FSB told us "[The Government] has not fully considered the impact on businesses with a very low rateable value or businesses that do not make the bulk of their profit from alcohol sales, and this has impacted negatively on FSB members and others".[32] Because the fees levied are dependent upon on the banding of the business rate system, small operators are paying less than larger ones, but the proportionate effect on smaller businesses can clearly be greater. This is a difficult problem to address. Some witnesses suggested that a '*de minimis*' system would help small operators to continue licensable activities. Mr Bish, of the Association of Licensed Multiple Retailers, said

> "we felt that looking at the business rate system was a good way forward in terms of the banding, but in fact the Government also put in place small business rate relief for very small businesses, so if that had also kicked in for the purposes of the fee system, the fees for the smallest of businesses could perhaps have been halved".[33]

25. The Minister for Media and Tourism told us it would require primary legislation to move away from the current fee levels, and responded to our concerns about flat rate fees:

> "you can either have a very simple system which does not have its own requirement to collect lots and lots of information, which is what we have gone for, we have used the proxy of rateable value and the advantage of that is that it is easy to collect and does not create a lot of extra cost for local authorities. Or you could go for something much more precise and targeted which involves collecting lots of information, but that cost would then have to be recouped from the premises and the licensees and in effect they might be no better off".[34]

We are not convinced that the gathering of information in this way would be so expensive, and would be interested to know how the DCMS arrived at this conclusion. **We look forward to the conclusions of the Elton Review concerning flat rate fees.**

26. We note that premises fees are not payable by church or community halls, which we welcome, although such organisations are still compelled to have a personal licensee and to go through the often expensive application process.

27. The fee changes are seen as unfair in another way. In some cases, the fee will actually have dropped. Large concerns which previously paid high fees will now pay far less on the new ratings. Councillor Lewis told us "we have therefore seen clubs whom we might have charged in excess of £20,000 going down to a few hundred pounds".[35]

28. **We are aware that the Elton Review will be considering the impact of fees on very small businesses and has received evidence on the subject from some of those who informed our inquiry. The review has yet to make its opinion known on these 'stakeholder issues' but we hope that the final report of the review makes the disproportionate impact of fees on small operators an important part of its recommendations.**

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[32] Ev 22

[33] Q 4

[34] Q 87

[35] Q 43

Self Funding Regime?

29. The new fees regime is intended to be self-financing. The principle that the fees paid by licensees will be sufficiently high to offset the administration and enforcement costs of local authorities is a good one. We are however unsure whether the system will actually cover local authority costs. Andrew Fisher of Bolton Metropolitan Borough Council was not convinced that this would be possible:

> "We have done certain projections in Bolton and we are very much in the dark as to what the enforcement costs are likely to be. We are still liaising with our fellow enforcement bodies. Without saying too much, it looks as though we shall be there or thereabouts. We could be slightly under, slightly over, but whether we recover our overall costs will depend upon the enforcement costs; it is marginal based upon the enforcement costs".[36]

Councillor Lewis of Westminster City Council thought that her local authority could be drastically under-funded if larger premises had their fees reduced "because they have been defined as nightclubs. We cannot see, if we are going to do anything like the sort of job we are required to do, that we will not be millions out of pocket unless something very miraculous occurs".[37]

30. There is no reason why the enforcement of licensing activities should be subsidised by the public purse. However, that is no reason to disregard the fact that the current system may not meet the needs of local authorities. The Elton Review interim report states:

> "the information that was submitted indicated that as well as a net deficit in 2004/05, many authorities were also expecting to have a net deficit over the two year period including 2005/06".[38]

It adds that the long-term likelihood of a gap between funding and expenditure is something it intends to examine fully over the next year. **We welcome the Elton Review's intention to examine the implications for local authority finance of the new licensing regime. Local authorities should not be left out of pocket by the new fee structure.**

[36] Q 43

[37] Ibid

[38] Elton Review para 7.1

4 Guidance

Guidance for local authorities

Statutory guidance

31. Local authorities, applicants and residents all relied on guidance from Government during the transition process. Statutory guidance was issued in July 2004, almost a year after the Act was passed and only five months before authorities had to publish their licensing policies. Moreover, as we set out in paragraph seven, the Regulations which determined fees payable were only passed in February 2005, *after* licensing policies had to be written and just as the transition period began. The Institute of Licensing told us that this "led to nearly a year of uncertainty and confusion amongst licensing authorities".[39] It further commented that:

> "As the policies had to be approved by meetings of the full licensing authorities by December 2004, this only gave five months in which to draft, consult upon, and publish the policies".[40]

The Institute also said that many authorities had tried to include the 12-week consultation period recommended by Cabinet Office guidelines, making their job even harder.

32. The statutory guidance was not considered to be of high quality. Peter Wright, of Gateshead Council, commented "The drafting of the Act and Guidance is, at times, 'vague', inconsistent and naïve. Much of it reads as 'policy' rather than legislation".[41] He added "Substantial parts of the guidance appear to be written to give greater weight to the freedom and flexibility aspects than to the protection of local residents. Such lack of consistency has given the media free rein to criticise".[42] Andrew Fisher, of Bolton Metropolitan Borough Council, said "The published guidance from the DCMS was significantly different from the draft guidance and the changes were not highlighted".[43]

Amendments to the statutory guidance

33. Councillor Lewis also raised a problem that local authorities had encountered with one specific issue, describing the DCMS guidance as "bizarre and unhelpful".[44] She explained

> "when preparing for the transition period, all licensing authorities were extremely anxious to receive advice about so called 'embedded conditions' – that is, the conditions that would need to be attached to new premises licences to reflect restrictions on their use imposed by previous legislation. DCMS refused to issue any such Guidance until May 2005, by which time many licences had already been

[39] Ev 35

[40] Ibid

[41] Ev 33

[42] Ev 34

[43] Ev 40

[44] Ev 50

issued. The Guidance issued in May expressly contradicted advice contained in the statutory Guidance".[45]

The dilatory approach on the part of the DCMS was completely unacceptable, and left local authorities open to challenges based on guidance produced after they had already been obliged to make decisions.

34. At the end of September 2005, between the First and Second Appointed Days, a letter from Ministers was sent to local authorities. This letter appeared to be further additional guidance about the implementation of the Act issued in light of some of the problems already presented to DCMS. The letter seemed to shift the principle of the new licensing system, on which local authorities should lean when granting or rejecting applications, away from the presumption that longer hours were desirable, and towards placating residents. It also congratulated some local authorities on their 'pragmatic' approach to decisions, which did not tally well with the previous insistence on abiding by strict statutory requirements.

35. The Institute of Licensing said

> "such ministerial statements add to confusion and reduce clarity. Licensing authorities may become unclear over how much weight they should give to the letter, given they are already under a duty to have due regard to the statutory guidance".[46]

Other witnesses pointed out that the letter seemed to contradict the statutory guidance. Mr Kolvin, of the Institute of Licensing, said

> "The perception out there is that the Government are blowing hot and cold in initially saying that in order to reduce the problems of people emerging from premises en masse longer hours are needed; the more lately by letter of 13 September saying that really the views of residents are paramount".[47]

Mr Crowley, adviser to LACORS, agreed with this assessment, adding "we get a letter from the Secretary of State in mid-September saying, "We didn't really mean that; we meant listen carefully to what residents say", which is a big conflict. Perhaps, if that is the way the Government view it, it is a bit late to say it".[48]

36. We put these issues to James Purnell MP, Minister for Media and Tourism. In response to a question about the time taken to produce initial guidance, he said

> "this has been a huge exercise to change a piece of legislation which dates back to World War I, which brought six regimes into one and which has involved massive changes to the system, going from something with lots of centrally set hours

[45] Ibid

[46] Ev 37

[47] Q 47

[48] Ibid

> executed by magistrates, to something with local flexibility operated by local authorities".[49]

We recognise that the legislation and guidance were both complex pieces of work, but the Government had years to prepare for the implementation of this legislation. **The Government took an unacceptable time to produce statutory guidance. No adequate reason has been given for the late production of such important paperwork. The DCMS should have foreseen both the need for timely production of the guidance and regulations, and the amount of work needed to produce the guidance within the right timeframe. The short timescale also meant that it was not possible to try out the guidance, which could have eliminated many of the problems experienced by local authorities in the transition period.**

37. When we asked about the changes made to the guidance, Mr Purnell replied:

> "We could have issued one set of guidance and then said that's it, it's your problem, deal with it, or we could have done what we have tried to do, which is to respond to concerns as we have gone along and then you get accused of having given different bits of advice at different times. We thought it was better to respond to people's concerns".[50]

He rejected the idea that the September letter reflected a shift in Government thinking: "that came out of the LGA in particular coming to us and saying that they had some local councils who had concerns that there was a presumption for longer hours over people's objections and we made it absolutely clear to them that there was no such presumption where people had objected".[51]

38. The Cinema Exhibitors' Association, which is otherwise broadly content with the Government's efforts, made the important point: "A major lesson that we can learn is that when there are tight deadlines the underlying legislation must be settled before preparatory work is undertaken".[52]

39. **The timing of the delivery of the statutory guidance, which did not appear until nearly two years after the Act was passed, caused expense, inconvenience and stress for local authorities, already faced with implementing a massive licensing change. The Government failed in its duty to support implementation of its legislation by providing local authorities with the appropriate guidance in a timely fashion. Next time a major piece of legislation is passed requiring significant work on the part of local authorities, for example, the forthcoming Gambling Act, consistent guidance must be published before local authorities are required to act.**

[49] Q 72

[50] Q 72

[51] Q 73

[52] Ev 24

Guidance on implementation

40. Those local authorities who submitted evidence to us were clearly very involved in the process and we were impressed by their efforts. However, as we mentioned above, the Federation of Small Businesses revealed that, in areas where local authorities were not active in publicity campaigns, rates of timely applications were significantly lower than in areas with pro-active local authorities.

> "The council with the highest receipt of applications the week before the deadline was South Hams in Devon, receiving 77 per cent of all applications. Croydon council, which had no specific guidance on its website, received just 30 per cent of possible applications to convert in the week before the 6 August deadline".[53]

It is unfortunate that co-ordination of local authority activity was not encouraged more. The Wine and Spirit Trade Association was clear on this point:

> "There was a clear lack of guidance and support from central government for licensing authorities in implementing the Act. LACORS would have been the obvious channel but as their guidance is not binding, authorities have cherrypicked from it to suit them. The newly-formed licensing teams required structured, centralised guidance to encourage a more uniform approach to implementation around the country".[54]

Guidance for applicants

41. Applicants did not consider the guidance provided specifically for them by the Government very effective. We were concerned to learn, for example, that a telephone help line for applicants, funded by the DCMS and run by the LGA and LACORS (the bodies charged with bridging the gap between DCMS, local authorities and applicants), was only set up in mid-July, barely a fortnight before the First Appointed Day. This helpline had dealt with 850 businesses by the time LGA/LACORS sent their evidence in to us, a tiny proportion of those who had to apply for licences.[55] The Institute of Licensing was critical of this phone line and also told us that information leaflets in languages other than English were only produced in mid-summer.[56] **There are many small businesses in England and Wales run by people who do not have English as a first language and we find it reprehensible that this material was only made available in other languages late in the transition period. DCMS severely let down a proportion of potential licence applicants by lack of preparation.**

42. The statutory guidance was unclear about the specific requirements for applicants. Peter Wright of Gateshead Council gave one example:

> "The various timescales prescribed in the Act and Guidance are variously described in terms of calendar days, working days, weeks and months. If a Bank Holiday

[53] Ev 21

[54] Ev 31

[55] Ev 42

[56] Ev 37

> occurs during the part of the process measured in working days it delays the process by a day. If measured in weeks or calendar days there is no effect. The confusion caused by this has led to applicants advertising the incorrect last date for representations and having to readvertise or reapply in some extreme cases".[57]

Simple oversights like this adversely affect applicants, residents and local authorities. Applicants should be able to rely on the guidance they are receiving, and know that following it to the letter is possible.

Trade Associations

43. It is clear that trade associations have played a large role in informing and advising applicants, compensating in many cases for shortfalls in official information. Large companies of course had in-house expertise. Luminar plc for example, which had to apply for hundreds of new licences, told us that it produced in-house application packs for its unit managers, and provided its operators with legal advice.[58] The Institute of Licensing told us "It was left to many licensing authorities and trade associations such as the British Institute of Innkeeping to provide information and advice to their respective constituencies".[59] The Government should have been aware that those who were not part of trade associations, primarily small businesses, would require more support – relying on trade associations so heavily left them out of the loop.

44. Councillor Lewis of Westminster City Council was highly critical of the resources made available to support the implementation of the new regime:

> "Central Government … appeared to take little or no action to prepare the trade for the transition period … DCMS announced that it intended to publish a newsletter, to raise the profile of the Act, help ensure a smooth transition to the new regime, and provide clarity on areas of concern. It was initially announced that the newsletter would be published monthly. Throughout the period of transition, when licensees, licensing authorities, responsible authorities and the public were desperate for information and guidance only two issues of the newsletter were published".[60]

The DCMS let licence applicants down by failing to provide a satisfactory level of support. Resources were introduced late or failed to appear as promised. Government departments should make every effort to plan and deliver all necessary resources to all parties during the implementation of legislation.

Guidance for residents

45. A selection of residents' associations wrote to us to express their concern at the new regime; they had found the guidance as baffling as applicants had. Their chief worry was an inability to work out which parts of the guidance were definitive. When making a

[57] Ev 34

[58] Ev 31

[59] Ev 37

[60] Ev 50

representation against a licence application, it is vital to know whether one has grounds for complaint. We also hope that efforts will be made to ensure that guidance for residents is made available in languages other than English, where appropriate. **We recommend that the DCMS include the guidance available to residents in its review to ensure clarity.**

Inconsistent implementation

46. The greatest problem residents have found with the implementation of the Act is the inconsistency with which local authorities have applied the rules. Definitions of some terms have not been provided in the legislation, which has caused uncertainty and resentment. A prime example of this is the meaning of 'vicinity' - local authorities are left to decide how strictly they will define the term. The Network of Residents' Associations explained "This freedom granted to individual Licensing Authorities and then to the several Licensing Sub-committees of each Licensing Authority has led to a variable standard of determinations not only occurring in different Licensing Authorities but also within each Licensing Authority".[61]

47. Other inconsistencies include the provision of information to residents. The Redland and Cotham Amenities Society complained that "There is wide variation in the amount and ease of access to application documentation, reflecting the will and capability of LAs [local authorities] to inform their citizens. Some are exemplary, with comprehensive web sites and full information supplied to those making representations. Others refuse to provide or even allow copies to be taken of the application".[62] **Local authorities, or those organisations co-ordinating their activities, should make greater efforts to ensure good practice is established when implementing new legislation.**

48. Both these points were put to the Minister for Culture and Tourism. He told us that the DCMS was happy to include matters such as these in its review of the guidance, stating:

> "It may be that more flexibility is needed around vicinities, the definition of vicinity. It may be that there are other more cost-effective ways of advertising to local residents the fact that people are applying for variations. We are very happy about this and we are not in any way precious about saying we got it all absolutely right".[63]

49. We understand that local authorities will always need some room for manoeuvre in the making of decisions. The discretion to make locally appropriate decisions is necessary to implement the Act successfully. It is clear though from the concerns of those bodies that represent residents that local authorities would benefit from best practice guidance in some areas. The new representation process will clearly have the best results when there is no resentment on either side following a decision; something that could easily happen if authorities are perceived to be unfair. **The DCMS should ensure that its review of the guidance looks at the issue of local authority consistency in the implementation of the Licensing Act and the need for best practice information.**

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[61] Ev 24-25

[62] Ev 28

[63] Q 92

Guidance Review

50. The Government has already announced a review of the guidance which began in November 2005. The Network of Residents' Associations raised concerns about the prospect of the review, pointing out that "the vast majority of premises licences have been granted, and they have been granted in perpetuity".[64] Any substantial changes following a review are likely to lead to issues arising about those licences granted under the original guidance. The Institute of Licensing and the Magistrates' Association had several worries about the implications of a change in the guidance for those cases under review.[65] The Wine and Spirit Trade Association suggested "There must also be a review of how licensing authorities interpret and implement this guidance".[66] **While we are very glad that the DCMS has recognised the need to improve the current guidance, the process should be sensitive to the implications of any changes. The review will inevitably cause disruption for some; unfortunately it is necessary given the failings of the Department's original guidance.**

[64] Ev 26

[65] Ev 37 and 45

[66] Ev 31

5 Zoning

51. Zoning, that is the concept of designating certain areas as commercial, or residential, or varieties of either, was not included in the Act. Creating zones theoretically means that local authorities can restrict certain types of business to defined areas, thus making licence applications easier to deal with. Zones can also dictate different permissible opening hours. Nick Bish of the Association of Licensed Multiple Retailers, argued that the omission of zones from the Act created difficulties when the topic did appear to feature in the statutory guidance: "In the Act, for example, there is no mention of stress zones or zoning of any sort, whereas the guidance permits that matter to be addressed; therefore there was a conflict between the two".[67]

52. Mr Kolvin, of the Institute of Licensing, was critical of the omission of the zoning principle from legislation:

> "There is a very serious problem at the heart of the legislation. Parliament effectively was told that a zoning experiment in Scotland had not worked and we needed to get away from zoning, in other words, fixed hours. It was not quite right, that was not how it had been in Scotland. The experiment which had failed in Scotland was a different experiment of street designation orders, where different streets were designated in a different way. The Act will not deliver staggering: it will deliver the opposite of staggering. By encouraging longer hours, what is going to happen is one commercially-driven later hour and it is going to be worse than the current system because it is not going to be an hour which is clear".[68]

53. The Minister for Media and Tourism claimed that the Act enabled local authorities to introduce zones themselves to help determine their licensing approvals:

> "Previously councils had very little ability to refuse a licence, they were unable to say the area was already saturated and they wanted to have the ability to have a presumption that they will refuse licences. The Act, for the first time, allows people to do that. I was in South Hams recently, for example, and in Torquay they had brought in exactly that kind of cumulative impact zone which allows them to limit the number of premises which open and they have conditions which they are applying".[69]

54. The Network of Residents' Associations was not happy that councils have the discretion to operate zones or not:

> "In cities with a dense collection of licensed premises, it has proved possible to include in the local Licensing Policy a strongly worded policy on "cumulative impact" related to certain areas. This has allowed Licensing Authorities to respond to representations with firm policies so that adequate restrictions to protect the environment can be imposed. It was much easier to refuse extensions of hours and

[67] Q 10

[68] Q 48

[69] Q 110

> impose noise controls on premises in areas of "cumulative impact". Where local Licensing Policies have no such "cumulative impact" policy, it has proved much more difficult for objectors to succeed in restricting hours of closure".[70]

55. If the Government is happy for local authorities to introduce their own zones, based on cumulative impact, it seems contrary that they rejected the idea of zoning in the Act based on the Scottish experience. **The confusion between the Act and the statutory guidance regarding the issue of zoning is unhelpful. We recommend the Government clarify its position towards the issue of zoning in the reviewed guidance, and make the right of local authorities to create zones of cumulative impact explicit, so that local authorities and licensees alike can understand the aims of the Act in this respect.**

[70] Ev 24

6 Small operators

56. The FSB brought up the problems faced by small operators[71] when the new regime was introduced:

> "the Licensing Act (2003) is fundamentally flawed with regards to small businesses. The problems are principally associated with fees, bureaucracy, and disparity in the actions of the implementing local authorities. A lack of adequate consultation may also have contributed to the difficulties with the new regime".[72]

57. The Government memorandum, which breaks down the sectors requiring licenses, lists among them village and community halls, boats, circuses and theatres and wider arts. Some of these operators will not have required a licence before and are unlikely to derive much of their income from licensed activities. The FSB gives examples:

> "The new fees system has resulted in some SMEs selling alcohol at a loss. One member used to make £89 profit a year from selling alcohol at her guest house. Under the new system, she sells alcohol at a loss because her customers expect the service of a small bar. Another member runs a florist shop. Under the new system, he has to double the amount of champagne he sells to make a profit."[73]

58. We asked the Minister for Media and Tourism specifically about village halls, and he told us "We responded to those concerns by commissioning ACRE [Action for Communities in Rural England] to do some research on the actual effect on village halls and we will look at that research".[74] It was made clear that the DCMS was waiting for the outcome of this exercise before making decisions regarding community facilities and licensing fees. **We are concerned that the new licensing system will discourage community facilities from carrying out the range of activities they have previously engaged in, and this goes against the ODPM's drive for sustainable communities. We expect the DCMS to take this fully into consideration when assessing the results of research into the effect on village halls and similar organisations.**

59. The FSB suggests that there are businesses which would choose to cease their licensable activity rather than pay the fees involved in the new licence scheme:

> "Already two members are closing down their businesses because of the cost of implementing the new regime. These members are the ones that we are aware of, but there may be many other small businesses in the same position. This is the undesired effect of the new regime and one which has affected a considerable amount of businesses and will continue to do so if the status quo remains".[75]

[71] We use the term small operators in this Report as we recognise that small businesses are not the only organisations affected by the new licensing regime.

[72] Ev 20

[73] Ev 22

[74] Q 80

[75] Ev 23

We are concerned that businesses will close because of the new fees regime. Closure is not the only issue. In oral evidence, Stephen Alambritis of the FSB told us "A number of [small operators] have said they will not extend their economic activity and they will stay as they are because they can make some savings".[76] This is also undesirable – especially given that the example Mr Alambritis gives is of the small shop which competes with a large supermarket. We do not wish to see communities damaged by the licensing system.

60. Small operators faced distinctive problems with the new system. The application forms proved hard for many to understand. We have discussed many of the discrete issues surrounding the application process, but it was small operators who were most likely to fall foul of the requirements of the new Act. The cost of application was also likely to be proportionately higher for those small operators who had to draw up floor plans or publicise their application in expensive local papers. We discuss this further in paragraphs 66-69 below.

61. We do not believe that the DCMS recognised the specific difficulties of small operators who found themselves applying for licences. **We consider that the impact on small operators should be a prime focus of the reviews of the Act and its workings. The DCMS should look urgently for a solution to the problem of small operators which are stagnating or ceasing activities as a result of the new fees structure.**

[76] Q 4

7 Regulatory burden

Local authorities

62. One purpose of the Licensing Act was to simplify regulation for all involved. The transition process has not been easy, and the regulatory burden on local authorities has been considerable at all levels. As we have already mentioned, staff and licensing sub-committees have been under a considerable amount of strain. Phil Woolas MP, Minister for Local Government, told us

> "there were significant, let me put it that way, representations from individual local authorities and of course, through Members of Parliament on their behalf and discussions between the LGA and ODPM and of course LGA and DCMS and ODPM to look at the administrative impact and the cost impact both in the short, the medium and the long term to try to ensure that the regime was self-financing and to try to ensure that local authorities were in a position to administer the scheme properly".[77]

63. Despite this attempt to co-ordinate, it does not seem that local authorities have felt adequately supported by the ODPM during the transition period. The burden on them to carry out such tasks without much local discretion was mentioned by LACORS:

> "We believe that the decision to remove council discretion was a mistake. This meant that councils, applicants and residents became frustrated by the inflexibility of the legislation. We would like to see greater flexibility brought back into the system in line with ODPM's stated aim of increased freedom for local councils".[78]

64. The role of the ODPM has not been clear. Councillor Lewis told us that Westminster had initially turned to the ODPM regarding the restriction on the size of Licensing Sub-Committees, only to be referred to the DCMS who told us in October that the application was yet to be decided.[79] No response was received from either department. We are not clear why ODPM could not have made a decision in this matter, involving as it did local government structures.

65. The Minister for Local Government told us that the ODPM intended to take the lead in ensuring that local government understood its responsibilities under the Act.[80] Given this assurance, we look forward to seeing the ODPM taking a greater role in assisting local authorities with their regulatory processes. We are hopeful however that the burden of these will be considerably reduced in future. **ODPM should provide clear leadership to local authorities as they implement the Licensing Act 2003, and make clear its role as the department responsible for local government structures and working. Government should ensure that, if it claims to be legislating to reduce regulatory burden, this actually occurs.**

[77] Q 75

[78] Ev 44

[79] Ev 50, and discussed in paragraphs 72-73

[80] Q 114

Applicants

66. The regulatory burden on applicants has been considerable, and shows less sign of easing than the strain on local authorities. Many of those submitting evidence to us complained about the nature and expense of the application process. The FSB said

> "The most oft-cited problem with regards to bureaucracy has been the length of the licence application forms. The form to apply and/or convert the alcohol licence is 21 pages long. If converting a licence, only seven pages of the form are actually relevant. However, the form still needs to be read and analysed before it can be completed".[81]

Floor plans had also to be submitted along with application forms, and had to be to a specific scale. This meant that businesses which already had floor plans, but to the wrong scale, had the expense of redrawing them. In addition, as the British Beer and Pub Association noted,

> "some Councils believed that all outside areas must be shown and at a scale of 1:100. What was the point of sheets of paper showing the golf course, the hotel gardens or the race-track? The confusion over plans was probably the single biggest issue holding up applications".[82]

67. Public notices advertising the licence application had to be on A4, and on pale blue paper. This small detail appears to have caused some difficulty. One contributor to the FSB's evidence said "Do you know how hard it is to get a small amount of pale blue paper? It's not something I'll ever use again".[83] While we do not consider the pale blue paper to be the hardest part of the requirements to meet, it is symptomatic of the stress caused to some applicants that this issue has proved quite so problematic.

68. The consequences of these requirements were twofold: applicants found that applying was significantly more expensive than they had expected, and some licence applications were refused on small technicalities. The Elton Review also looked at the problems experienced by applicants, and made two recommendations which we support:

> 'Consideration should be given to simplifying the application process by:
>
> a) introducing an alternative method of advertising applications other than newspapers that is effective in both cost and impact;
>
> b) providing guidance that makes explicit that 'professional' drawn premises plans are not necessary in all instances'.[84]

69. It seems to us that the requirements are unnecessarily prescriptive and will continue to lead to delay and expense for no reason. For example, we are unable to see why the advertisement must be specifically on pale blue paper, or why floor plans must all be to the same scale. Neither of these requirements appear to make a significant difference to the

[81] Ev 20-21

[82] Ev 47

[83] Ev 21

[84] Independent Licensing Fees Review Panel, para 4.3.3

effectiveness of an application, yet, for smaller operators especially, they may impose unacceptable levels of effort and expense. **We endorse the findings of the Elton Review concerning the application process and ask the Government to consider whether such prescriptive requirements are necessary, particularly in relation to small operators.**

Residents

70. The Licensing Act 2003 was intended to create powers for residents to object more easily and effectively than before. The evidence we have received from residents' organisations suggests that this has not yet been achieved. The Network of Residents' Associations provided us with many examples of the problems facing those who wish to object, including lack of information – for example, there is no obligation on the Magistrates' Courts to inform an objector that an applicant has appealed against a rejected application; the fact that there are no rules for costs to be awarded should an objector lose an appeal and the problems of obtaining 'proof' of nuisance to be created by a premises yet to open.[85]

71. Redland and Cotham Amenities Society also raised the issue of short notice periods for representation hearings:

> "The minimum required is 10 working days, with notification of attendance required 5 working days before hearing. This is completely inadequate. Because of this short period objectors may not even receive the Notice of Hearing in time to accept - they need only to be away for a week for this to happen. In any case, with all hearings taking place in the day many are unable to attend and certainly not at such short notice".[86]

Residents feel that the system set up to improve their rights is not working as it could. While the roots of an effective objection process are there, small matters that might be easily overcome are causing great annoyance. It should not be difficult to publish rules for costs to be awarded, or to change notice periods for hearings. **The DCMS should take account of the complaints of residents to discover if there are acceptable resolutions to the problems encountered by those formally objecting to licence applications.**

[85] Ev 24-26

[86] Ev 28

8 Application process

Licensing Sub-Committees

72. A disproportionate number of applications were received in the last two weeks of the transition period. The way in which the applications were clustered in this time, and the two month deadline for decisions, had a huge impact on the Licensing Sub-Committees charged with examining applications. Councillor Lewis told us that at Westminster City Council "by the end of the transition period and thereafter, we were holding nine or ten Licensing Sub-Committees a week, each dealing with up to 15 or 20 applications".[87]

73. Licensing Sub-Committees are limited to a membership of 15, unlike any other council committees. This limit put a severe strain on some authorities, faced with holding many more sessions than usual. Westminster appealed to the ODPM for an exemption to this rule in light of the burden the Licensing Sub-Committee was facing, and did not hear back from either the ODPM or the DCMS; we find this disappointing.[88] We see no reason why the number of members on a Licensing Sub-Committee should be restricted in this manner, nor why the restriction currently in place could not be lifted on a case by case basis. **The DCMS should include provision for flexibility in the membership of Licensing Sub-Committees when reviewing the Licensing Act 2003.**

Committee Operations

74. Local authorities operate different panels and committees, which have semi-judicial status. These bodies do not operate under uniform rules. One issue which was clearly a problem for councillors and MPs was the restriction placed upon them making representations against licensing applications unless they themselves were directly affected by the application. This is not in line with the operation of other committees with similar powers, for example planning committees, and is seen as inconvenient for elected representatives and residents alike. It is also the case that councillors, licensing officers or MPs are able to speak on behalf of communities that might not otherwise feel able to make representations; it is more likely to be the articulate and confident residents who will object in the first instance. The Institute of Licensing had similar concerns regarding its members:

> "the Act constrains officers of the licensing authority – who often have first-hand knowledge of the characteristics of premises in their area – from making representations or applying in due course for those licences to be reviewed in appropriate cases. We feel that this facility would have represented an important element in terms of public protection and public safety".[89]

We recommend that the restriction placed on elected representatives who wish to act against licensing applications on behalf of others be lifted. It would also be expedient for licensing officials to have the power to make representations against applications.

[87] Ev 49

[88] Ev 50

[89] Ev 37

Committee Co-ordination

75. The Network of Residents' Associations told us of its concern at poor co-ordination between local authority departments. They cited liaison with planning authorities as an example:

> "Where an application for a premises licence includes a request that conflicts with a planning condition, the planning authority has an option to object. Some planners will not object unless the relevant condition can be specifically related to one of the four licensing objectives. Others will just mention it to the Licensing Authority with the expectation that this will be pointed out to the applicant. The Licensing Authority may then advise the applicant to apply to have the planning condition removed or to modify the application, but, even if neither of these actions are taken, the Licensing Authority will grant the premises licence with the facility that is in breach of the planning condition".[90]

There is also concern that committee members are not making decisions with the same rigour across the board. Some best practice training would clearly be useful. Each committee must work to different requirements – planning and licensing committees, for example, which make decisions similar to each other, may have totally different standards within one local authority.

76. Some authorities have liaison committees that co-ordinate information from different areas. The Network of Residents' Associations thinks that these should be mandatory. We find this a sensible suggestion. We support the development of information sharing mechanism to enable licensing applications to be scrutinised with better understanding of the issues involved. **The ODPM should investigate the feasibility of issuing good practice guidelines within local authorities to ensure effective co-ordination.**

Magistrates' Courts

77. Councillor Lewis stated

> "Because not all licensees submitted conversion applications in time, the 'relicensing' process is not yet over. There are now large numbers of new applications to deal with, as explained below. Moreover, the Council will be continuing to deal with appeals against Licensing Sub-Committee decisions for at least a further year. The ability of the Magistrates' Courts to deal with the volume of appeals efficiently, and the cost of those appeals are both matters of serious concern to us".[91]

The Magistrates' Association sent evidence to us. Its prime concern was the likelihood of appeal 'bunching' in certain areas, such as Westminster, where large numbers of applications might be made. The Association proposed to James Purnell MP, the Minister responsible for the transition process, that one solution would be

[90] Ev 25

[91] Ev 49

> "to identify potential licensing appeal 'hot spots' and for the relevant authorities to seek means by which additional teams of magistrates and legal advisers might be asked to volunteer to move into these areas from elsewhere, in order to cover just this potential short-term transitional problem".[92]

No practical response was made to this suggestion. The Association acknowledged that no hot spots had so far been identified, and that the high volume of appeals might prove to have been contained within the transition period, but still believe that some guidance on the subject would have been useful.

78. We think that the DCMS, and the Department for Constitutional Affairs (to whom the proposal was also made) should have made some response to the idea put forward by the Magistrates' Association. It may be that some future legislation arouses a similar demand on the magistrates' courts, or that a large number of appeals against another process are made in one particular year. The revision of the guidance could itself lead to an increase in the appeals made against the decisions of Licensing Sub-Committees. **The DCMS and the Department for Constitutional Affairs should make clear whether they have practical plans to help magistrates' courts deal with high demand arising from the new licensing regime, and should ensure that any revision of the guidance likely to lead to an increase in appeals is introduced in a way that eases the burden on the courts.**

Slip Rules

79. Some application processes do not allow any latitude in their administration – the passport application form is a prime example. Many others are far less prescriptive and allow certain mistakes, including spelling errors and minor omissions, which can be easily rectified. Such allowances are what is meant by a slip rule. At present, the licence application process does not have this provision. We had several calls for the introduction of a 'slip rule' into the application process, and have examined this idea.

80. Such inflexibility has meant that applications have had to be turned down because of very small errors. One example is the public notices which must be displayed on every premises applying for a licence. Applicants who have used the wrong size or the wrong colour paper have found that their applications are refused or challenged by others on those grounds. This is not productive for anyone. The Wine and Spirit Trade Association told us that a slip rule was put in place for applications for premises licences without variation[93] (i.e. those who merely wished to renew an existing licence without any changes to hours), but witnesses proposed a similar system for all applications.

81. The Wine and Spirit Trade Association felt that a slip rule would provide more certainty for applicants,[94] the Institute of Licensing provided several instances where it would ease the application process[95] and the Association of Licensed Multiple Retailers claimed that it would avoid "incurring additional costs in time and money for applicants

[92] Ev 45

[93] Ev 30

[94] Ibid

[95] Ev 35

and local authorities".[96] Others also supported the idea. Councillor Lewis illustrated her argument for a slip rule: "I was asked by my local Japanese restaurant whether I would help them with their application and I told them precisely what I thought should go in every section; I did not actually fill out the form. They got it back with five mistakes which I had not been able to predict. [The rules] were very prescriptive and there was no slippage. We should like to have been allowed to say "Oh that's not going to affect the outcome" and proceed".[97]

82. Next time the Government is implementing legislation which requires large-scale applications from businesses or the public, we would like to see local authorities given the flexibility to allow re-submissions of incorrect forms if necessary, rather than being forced to reject the application outright, leading to unnecessary delay and expense.

83. The Minister for Culture and Tourism told us

> "In terms of the slip rule, we were specifically requested to do that earlier on before the summer and we did not, because we were worried that it would actually make the system less flexible. If we were to have passed a slip rule saying you can be flexible about A, B, C, we were advised that there was a risk then that local authority legal departments might say "Ah, well, they have not said that you can be flexible about D, E, F" and therefore it would have reduced people's flexibility. Instead, what we did was to write to people and say that we were encouraging them to be flexible about this and please exercise that flexibility as far as they can".[98]

84. While we understand the point that the Minister is making, it is not possible to ask authorities to be flexible if the legislation prohibits them from doing so. We realise that any slip rule put in place would need to be very specific; we have already expressed our disquiet at the level of inconsistency between authorities. Nevertheless, we think that there is an acceptable level of latitude that could be included in new guidance. At the very least, spelling mistakes and inconsequential matters should not on their own cause an application to fail. **We urge DCMS to consider the evidence presented to us on the matter of overly prescriptive regulations when reviewing their guidance, and to investigate the feasibility of a 'slip rule'.**

[96] Ev 38

[97] Q 30

[98] Q 92

9 Conclusion

85. The Licensing Act 2003 gave the Department for Culture, Media and Sport the opportunity to simplify the licensing regime and reduce the regulatory burden on local authorities and licensees alike. The Act also aimed to provide residents with greater powers to object, and more involvement in the decision making process.

86. It is clear that, at present, the many problems encountered during the transition period are clouding the issue of whether the Act will be successful in these aims. It is unfortunate that so many errors have been made in the DCMS's planning during this time. There has been considerable stress on all parties, who were forced to deal with late regulations and guidance, inconsistent advice, unclear and irregular information and inadequate support. **The ODPM failed local authorities: the department is there to support the workings of local authorities. We see little evidence that this was done during the transition period. Nor was action taken when direct appeals were made.**

87. We hope that the DCMS review of guidance, and the Elton Review on fees will address many of the issues we have brought to the Government's attention. We regard the establishment of these reviews as a first step towards rectifying the problems inherent in the current system. The reviews should however seek to avoid imposing changes that will only cause further administrative burden, confusion or bad-feeling.

Conclusions and recommendations

Introduction

1. We look forward to the final report of the Independent Licensing Fees Review Panel and expect that our Report will be of use to the Review. (Paragraph 6)

Timescale

2. We are not convinced that a longer period for applications was needed, but consider the administration of the process within this time to have been lacking to the extent that applicants were disadvantaged, and local authorities put under unnecessary strain. The First Appointed Day could have been delayed once it was clear that the Regulations would be laid so close to the start of the six month transition period; inflexibility regarding the date of implementation is unproductive if the required legislation cannot be produced in a timely fashion. (Paragraph 11)

3. Imposing a two month time limit on licence application decisions without any flexibility to allow for the volume of applications was unrealistic. The Government should not impose time limits of this sort again without adequate provision for change if necessary. (Paragraph 12)

4. We urge the Government to introduce a mediation procedure into the process, in order to foster better relations between licensees and residents, to reduce the burden on magistrates' courts and to minimise the cost to applicants. It is disappointing that the two month deadline on decisions imposed during the transitory period may have prevented successful mediation in some cases. (Paragraph 15)

5. We agree with the Elton Review's suggestion that an Annual Day for the payment of fees be established, although we do not wish to see licensees suffer financially from such an arrangement. Licensees who would be substantially disadvantaged by the introduction of an Annual Day should receive a pro-rata rebate of the first year's fee. (Paragraph 18)

Fees and Funding

6. We expect the DCMS to iron out the inconsistency that prevents residents from objecting to Temporary Event Notice applications. (Paragraph 21)

7. We are concerned that the handling of Temporary Event Notices by local authorities appears to be poorly co-ordinated. We welcome the inclusion of the subject in the Elton Review and recommend that the system be revised to ensure consistency and fairness. (Paragraph 22)

8. We look forward to the conclusions of the Elton Review concerning flat rate fees. (Paragraph 25)

9. We are aware that the Elton Review will be considering the impact of fees on very small businesses and has received evidence on the subject from some of those who

informed our inquiry. The review has yet to make its opinion known on these 'stakeholder issues' but we hope that the final report of the review makes the disproportionate impact of fees on small operators an important part of its recommendations. (Paragraph 28)

10. We welcome the Elton Review's intention to examine the implications for local authority finance of the new licensing regime. Local authorities should not be left out of pocket by the new fee structure. (Paragraph 30)

Guidance

11. The dilatory approach on the part of the DCMS was completely unacceptable, and left local authorities open to challenges based on guidance produced after they had already been obliged to make decisions. (Paragraph 33)

12. The Government took an unacceptable time to produce statutory guidance. No adequate reason has been given for the late production of such important paperwork. The DCMS should have foreseen both the need for timely production of the guidance and regulations, and the amount of work needed to produce the guidance within the right timeframe. The short timescale also meant that it was not possible to try out the guidance, which could have eliminated many of the problems experienced by local authorities in the transition period. (Paragraph 36)

13. The timing of the delivery of the statutory guidance, which did not appear until nearly two years after the Act was passed, caused expense, inconvenience and stress for local authorities, already faced with implementing a massive licensing change. The Government failed in its duty to support implementation of its legislation by providing local authorities with the appropriate guidance in a timely fashion. Next time a major piece of legislation is passed requiring significant work on the part of local authorities, for example, the forthcoming Gambling Act, consistent guidance must be published before local authorities are required to act. (Paragraph 39)

14. There are many small businesses in England and Wales run by people who do not have English as a first language and we find it reprehensible that this material was only made available in other languages late in the transition period. DCMS severely let down a proportion of potential licence applicants by lack of preparation. (Paragraph 41)

15. The DCMS let licence applicants down by failing to provide a satisfactory level of support. Resources were introduced late or failed to appear as promised. Government departments should make every effort to plan and deliver all necessary resources to all parties during the implementation of legislation. (Paragraph 44)

16. We recommend that the DCMS include the guidance available to residents in its review to ensure clarity. (Paragraph 45)

17. Local authorities, or those organisations co-ordinating their activities, should make greater efforts to ensure good practice is established when implementing new legislation. (Paragraph 47)

18. The DCMS should ensure that its review of the guidance looks at the issue of local authority consistency in the implementation of the Licensing Act and the need for best practice information. (Paragraph 49)

19. While we are very glad that the DCMS has recognised the need to improve the current guidance, the process should be sensitive to the implications of any changes. The review will inevitably cause disruption for some; unfortunately it is necessary given the failings of the Department's original guidance. (Paragraph 50)

Zoning

20. The confusion between the Act and the statutory guidance regarding the issue of zoning is unhelpful. We recommend the Government clarify its position towards the issue of zoning in the reviewed guidance, and make the right of local authorities to create zones of cumulative impact explicit, so that local authorities and licensees alike can understand the aims of the Act in this respect. (Paragraph 55)

Small Operators

21. We are concerned that the new licensing system will discourage community facilities from carrying out the range of activities they have previously engaged in, and this goes against the ODPM's drive for sustainable communities. We expect the DCMS to take this fully into consideration when assessing the results of research into the effect on village halls and similar organisations. (Paragraph 58)

22. We consider that the impact on small operators should be a prime focus of the reviews of the Act and its workings. The DCMS should look urgently for a solution to the problem of small operators which are stagnating or ceasing activities as a result of the new fees structure. (Paragraph 61)

Regulatory burden

23. ODPM should provide clear leadership to local authorities as they implement the Licensing Act 2003, and make clear its role as the department responsible for local government structures and working. Government should ensure that, if it claims to be legislating to reduce regulatory burden, this actually occurs. (Paragraph 65)

24. We endorse the findings of the Elton Review concerning the application process and ask the Government to consider whether such prescriptive requirements are necessary, particularly in relation to small operators. (Paragraph 69)

25. The DCMS should take account of the complaints of residents to discover if there are acceptable resolutions to the problems encountered by those formally objecting to licence applications. (Paragraph 71)

Application Process

26. The DCMS should include provision for flexibility in the membership of Licensing Sub-Committees when reviewing the Licensing Act 2003. (Paragraph 73)

27. We recommend that the restriction placed on elected representatives who wish to act against licensing applications on behalf of others be lifted. It would also be expedient for licensing officials to have the power to make representations against applications. (Paragraph 74)

28. The ODPM should investigate the feasibility of issuing good practice guidelines within local authorities to ensure effective co-ordination. (Paragraph 76)

29. The DCMS and the Department for Constitutional Affairs should make clear whether they have practical plans to help magistrates' courts deal with high demand arising from the new licensing regime, and should ensure that any revision of the guidance likely to lead to an increase in appeals is introduced in a way that eases the burden on the courts. (Paragraph 78)

30. We urge DCMS to consider the evidence presented to us on the matter of overly prescriptive regulations when reviewing their guidance, and to investigate the feasibility of a 'slip rule'. (Paragraph 84)

Conclusion

31. The ODPM failed local authorities: the department is there to support the workings of local authorities. We see little evidence that this was done during the transition period. Nor was action taken when direct appeals were made. (Paragraph 86)

Witnesses

Monday 31 October 2005

List of written evidence

List of unprinted written evidence

Additional papers have been received from the following and have been reported to the House but to save printing costs they have not been printed and copies have been placed in the House of Commons library where they may be inspected by members. Other copies are in the Record Office, House of Lords and are available to the public for inspection. Requests for inspection should be addressed to the Record Office, House of Lords, London SW1 (Tel 020 7219 3074). Hours of inspection are from 9:30am to 5:00pm on Mondays to Fridays.

RL B/P 01 – *Independent Licensing Fees Review – Interim Report*, November 2005

Supplementary background papers from the LGA/LACORS:

RL 14(a) – Example of local newsletter aimed at licensees

RL 14(b) – Chronology of key events

RL 14(c) – Example of a council's communication plan (Leicester)

Supplementary background papers from David Bieda, Meard & Dean Street Residents' Association:

RL 18 (i) – Letter to the Lord Chancellors Dept on the rights of those making representations before magistrates dated 6 Sept 2005.

RL 18(ii) – Letter to Horseferry Magistrates re: Candy Bar, London, dated 24 Oct 2005

RL 18(iii) – Email and News release – 26 October 2005

Supplementary background paper from the Department for Culture, Media and Sport:

RL 20(i) – Department for Culture, Media and Sport – 'Implementation of Licensing Reforms' – 30 Sept 2005

Formal Minutes

Monday 6 March 2006

Members present:

Dr Phyllis Starkey, in the Chair

Mr Clive Betts	Martin Horwood
Lyn Brown	Anne Main
John Cummings	Mr Bill Olner
Mr Greg Hands	Alison Seabeck

Re-licensing

Draft Report (*Re-licensing*), proposed by the Chairman, brought up and read.

Ordered, That the Chairman's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 18 read and agreed to.

Paragraphs 19 and 20 brought up.

Paragraph 19 amended and agreed to.

Paragraph 20 deleted.

Paragraphs 21 (now paragraph 20) to 44 read and agreed to.

Paragraph 45 read, amended and agreed to.

Paragraphs 46 to 54 read and agreed to.

Paragraph 55 read, amended and agreed to.

Paragraphs 56 to 70 read and agreed to.

Paragraph 71 read, amended and agreed to.

Paragraph 72 to 73 read and agreed to.

Paragraph 74 read, amended and agreed to.

Paragraph 75 read and agreed to.

Paragraph 76 read, amended and agreed to.

Paragraph 77 to 82 read and agreed to.

A paragraph brought up, read the first and second time and inserted (now paragraph 83).

Paragraphs 84 to 87 read and agreed to.

Summary read, amended and agreed to.

Resolved, That the Report be the Second Report of the Committee to the House.

Ordered, That the Chairman make the report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

Ordered, That the Appendices to the Minutes of Evidence taken before the Committee be reported to the House.

[Adjourned till Monday 13 March at twenty past Four o'clock.

Reports from the ODPM Committee since 2004

The following reports have been produced by the Committee since 2004. The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2005-06

First Report	ODPM Annual Report and Accounts	HC 559
First Special Report	Government Response to the Committee's Fourth Report of Session 2004-05, on the ODPM Annual Report and Accounts 2004	HC 407
Second Special Report	Government Response to the Committee's Eleventh Report of Session 2004-05, on the Role and Effectiveness of The Local Government Ombudsmen for England	HC 605

Session 2004-05

First Report	The Draft Regional Assemblies Bill	HC 62-I *(HC 459)*
Second Report	Annual Report to the Liaison Committee	HC 149
Third Report	Homelessness	HC 61-I *(CM 6490)*
Fourth Report	ODPM Annual Report and Accounts	HC 58 (*HC 407)*
Fifth Report	The Role and Effectiveness of CABE	HC 59 *(CM 6509)*
Sixth Report	Electoral Registration (Joint inquiry with the Constitutional Affairs Committee, First Joint Report of Session 2004-05)	HC 243-I *(CM 6647)*
Seventh Report	The Role and Effectiveness of the Standards Board for England	HC 60-I
Eighth Report	Empty Homes and Low-demand Pathfinders	HC 295-I *(CM 6651)*
Ninth Report	Ward Boundaries	HC 315 *(CM 6634)*
Tenth Report	Local Government Consultation	HC 316-I
Eleventh Report	The Role and Effectiveness of the Local Government Ombudsmen for England	HC 458 *(HC 605)*

Oral Evidence

Taken before the Office of Deputy Prime Minister: Housing, Planning, Local Government and the Regions Committee

on Monday 31 October 2005

Members present:

Dr Phyllis Starkey, in the Chair

Sir Paul Beresford	Anne Main
Mr Clive Betts	Mr Bill Olner
Martin Horwood	Dr John Pugh
Mr Mark Lancaster	Alison Seabeck

Witnesses: **Mr Stephen Alambritis,** Head of Parliamentary Affairs Federation of Small Businesses (FSB) and **Mr Nick Bish**, Chief Executive, Association of Licensed Multiple Retailers (ALMR), examined.

Q1 Chair: I should like to start the first session of questions. May I first of all thank you for the written evidence that you have submitted which has been available to members so we do not need to repeat anything that is in the written evidence? May I also just ask each of you to introduce yourself and say who you are?
Mr Bish: Good afternoon, my name is Nick Bish; I am Chief Executive of ALMR, which is the Association of Licensed Multiple Retailers, a trade association of pub companies.
Mr Alambritis: Hello everyone, I am Stephen Alambritis and I am the Head of Parliamentary Affairs at the Federation of Small Businesses.

Q2 Chair: Thank you very much. May I start then? The object of this hearing is to look at the re-licensing process and the way it was handled, and I think it is obvious that there are many ways in which it could have been handled better. I should like to ask each of you first whether the biggest problem was the process itself or the way in which it was implemented.
Mr Bish: I am happy to go into that. Obviously the two are different sides of the same coin. With hindsight, the way it was implemented should have been considered more carefully in the sense of workload and the complexity and costs of the outcome. With hindsight, a fabulous gift, it would have been much, much better to have converted the whole of licensing from a cumbersome system that it was hitherto into the local authority sphere and then, and only then, looked at the flexibility that was implied in the 2000 White Paper for the variations and the new flexibility and the new attractiveness of the scheme. So one step should have followed the other, as opposed to trying to do both at the same time.
Mr Alambritis: Our preferred option was to introduce the new licence system as and when licences expired, especially for small businesses. We feel that in the implementation there has been a lot of good will, good intent on the part of local authorities. A lot of local authorities put in place training and seminars and went out to visit the small businesses and started their information very, very early. What was of concern to us, in terms of the process, was the 21-page form. As I understand it, in fact the vast majority of them needed only to fill in seven pages of that 21-page form. If the DCMS had copied the way in which the self-assessment form goes out to businesses, which is that they are asked to apply for the form relevant to them, and the businesses had had the opportunity to tick a box somewhere so that they just received the seven pages, I think that would have been a good step forward.

Q3 Chair: From the evidence that was given to us, it is clear that some sectors of the trade actually did manage to deal with the process reasonably well. We were told that the pub sector was fully prepared. I notice that we had evidence from the Cinema Exhibitors' Association and they seem to feel that the process had gone very well. Why do you think that some parts of small business coped and some did not?
Mr Bish: I can tell the Committee what was good: the communication channels in the licensed retail sector were. The communication channels are very good through the quite effective trade associations, the British Institute of Innkeeping, which reaches individual operators and the companies themselves. The structure of the industry is such that there is a channel in the passage of communication which makes this sort of thing relatively easy to manage. It is also hugely important for landlords and parent companies at every level to get it right and many of them took to themselves the burden of the transition and the compliance and the investment in lawyers' time; so it was regarded as an investment, it came out as a cost and that is how it worked. You pay for what you get.
Mr Alambritis: For our members, the SMEs, the micro businesses, where they were translated as pubs or as groups, then obviously it was difficult for them, for the one-person operation. I am talking about the florist who is sending 50 bottles of champagne throughout the year having to register; I am talking about the bed and breakfast in Blackpool which sells a few cans of lager at the bar. They were assumed to

be major licensing operations and used to the system, so the new system of re-licensing, the 21-page application, the £35 they were used to going up to £180, was difficult for them.

Q4 Sir Paul Beresford: You are talking about micro businesses. In my constituency I have 32 villages, many of them have village shops, the village shops sell a few beers, a couple of bottles of wine et cetera. Could there not have been a *de minimis* level below which they would not even have to apply?
Mr Bish: Yes, we felt that looking at the business rate system was a good way forward in terms of the banding, but in fact the Government also put in place small business rate relief for very small businesses, so if that had also kicked in for the purposes of the fee system, the fees for the smallest of businesses could perhaps have been halved. In fact in Mole Valley itself, there was 90 per cent compliance amongst the small business community well before 6 August and that was down to a proactive approach from the local authority. Where there has been a proactive approach, it has worked.

Q5 Alison Seabeck: Obviously the fees attached to the licensing process have changed, increasing for some, decreasing for others. Are you picking up any evidence already that some businesses are actually ceasing to trade as a result of the impact of these fees on them?
Mr Bish: I have to remind the Committee that I represent companies and individual operators may have approached this differently. The research that we did into the experience of my members showed that it cost about £1,500 to go from then to now through the transition process, which may or may not have included taking legal advice, but probably did. That was about the level and I think that there will be some who have found that a huge burden, although I expect my colleague can answer better for micro businesses.
Mr Alambritis: We have had some cases where the entrepreneur has said that this is it, it is too costly, it is not worth selling alcohol: if it is a florist or some other kind business. We have also had the impact on economic activity where I understand you have to vary the licence if you want to go on until 11.30pm, but if you stop at 11pm, you do not have to undertake the new licence regime or the variation and the extra cost, so a number of members have said they are sticking to shorter hours. There is tough competition out there with the big supermarkets opening 24 hours a day, so we think that is a retrograde step in terms of entrepreneurs saying they will stick with 11pm and not 11.30pm; I think that is the kind of timing that is of concern to them. A number of them have said they will not extend their economic activity and they will stay as they are because they can make some savings.

Q6 Alison Seabeck: In a sense you are saying it was a restriction on growth for some of these organisations, but marginal, therefore rather than encouraging small businesses to grow, it will have a dampening effect.
Mr Alambritis: Yes, for the small micro businesses.

Q7 Alison Seabeck: Do you think a system of variable fees would have been helpful, or do you think it actually might have further complicated what was already a complicated process?
Mr Alambritis: We think one of the better principles of good regulation is proportionality and if the fee system had taken into account the florist, the bed and breakfast, those who are not pubs, not multiples but have within their trade an element of licensing, if the system had recognised that, it would have met the proportionality arguments that we put in place.

Q8 Dr Pugh: We have heard about the 21-page form, but any form comes with a set of guidance notes and further guidance still, probably. It is alleged that official guidance has been confusing and in some cases contradictory. Have you found it to be so and what specific problems have been created for your members by it?
Mr Alambritis: We found the local authorities up and down the country have been very good and have been very helpful in terms of the form itself. We have found that LACORS, the regulatory authority, and their phone line have been immensely helpful. The problem has been with those entrepreneurs who worry themselves sick when they see a huge form, worry about whether they will get it right and leave things to the last minute. In Vermont in America, it is compulsory there for a seminar to be undertaken by the state for every licencee; they are invited to a seminar, very local seminars, about the whole system. Now I know that throughout the UK, a number of local authorities have held seminars and training events. A good local authority has been Lewes, where the senior licensing officer visited every business. Now it could be that they are small enough for him to do that but that has been very helpful. The form has been worrying; the guidance notes have been worrying for many small businesses.

Q9 Dr Pugh: Mr Bish speaks for bigger enterprises. Have they found it problematic?
Mr Bish: Yes.

Q10 Dr Pugh: Why particularly?
Mr Bish: The problem was that some of the guidance did not necessarily relate to the Act. In the Act, for example, there is no mention of stress zones or zoning of any sort, whereas the guidance permits that matter to be addressed; therefore there was a conflict between the two. The guidance was not helpful in explaining or amplifying the Act, but produced new concepts, as it were, if taken in its own right. Take as another example, advertising. The requirements were that premises should advertise for their variations in the local press and yet some local authorities were taking it upon themselves to advise local residents, neighbours of the business, about the impending application. Now, it seems bizarre that you needed to do both and in fact the advertising was compounded by lots of local problems. Newspapers with space were premium charging on the limited amount of classified space

that they allowed and so on. So these were issues that were not addressed and became problems; probably out of all proportion.

Q11 Dr Pugh: So how did an individual person running a premise resolve this issue when they found that in one local authority one set of advice had been given and in another local authority another set of advice was being given? Did they refer to the LACORS regulatory services and their website?
Mr Bish: Well I could obviously speak for my own members who came back to me and I thrashed around and I would also endorse what Stephen has said here, which is that LACORS have been hugely helpful and officials in most respects have been hugely helpful in local authorities. So you just have to go virtually on a case by case basis and say this is the position, this is a for-instance, how do I advise this member of mine. We have taken back the best advice available at that time.

Q12 Anne Main: You mentioned stress zones as being one of the contradictory pieces within it. What sort of advice then have you given to any local authorities which have come to you talking about stress zones?
Mr Bish: It is not really for us to give advice to them.

Q13 Anne Main: Or to businesses.
Mr Bish: To members. Where they feel disadvantaged, they must make their representations to the local authority when it comes to a hearing or, if they are not satisfied with the outcome, reserve the right to take the matter to appeal or further.

Q14 Anne Main: And have you had some situations of stress zones being operated?
Mr Bish: Absolutely.

Q15 Mr Olner: The licencees have made complaints about the guidance and the lack of clarity, consistency and inadequate time to apply for licences, but the same could have been said for people who objected to the licences being given.
Mr Bish: Indeed; certainly.

Q16 Mr Olner: Do you have you any comments about how the systems worked for people wishing to put in legitimate complaints about licences being extended?
Mr Bish: Absolutely, to the extent that the system has allowed for a certain number of days for notices to be given, but by the time that the information has reached an individual, a neighbour "in the vicinity of", to quote the regulations, the time has been very short for them to assess the impact of what this variation means to them and to make representations to the local authority. Hence the headlines that we have seen in the newspapers saying that people have been disadvantaged by the application from the pub, or the whatever, in the area to do something. It is a pity; it has not been of licensees' making.

Q17 Mr Olner: Do they say they are disadvantaged on the appeal side as well? That is on the application, but if the application is allowed, did they have the right of appeal and were they disadvantaged there?
Mr Bish: I do not think so.

Q18 Chair: May I just clarify that point? If you accept that residents were often not given enough time to formulate their objections, would you, representing the industry, have been willing to see the process made even lengthier in order to give residents reasonable time?
Mr Bish: I think so; yes. It is not for me to represent the residents' point of view here because nobody has spoken to me; I am picking up anecdotal information. Above all, licensees want to serve the community in which they operate and it does them no favours to be cast as the villains of the piece, mostly in the press, when something goes awry; hence my earlier remarks about advertising and the local authorities making it clear that such and such an application from the local pub has been entered. Let everybody have a fair go at this and in fact, the longer the time, the greater the time for mediation. I believe this imposes an enormous responsibility on local authorities to achieve it before the matter comes to a hearing, because they have that chance to do it.

Q19 Mr Olner: How many cases have gone to mediation and how successful have they been?
Mr Bish: I am not the right person necessarily to answer that question. You may hear later in this session from somebody who can answer better and it will be anecdotal, because a lot of work is done behind the scenes, as it were. The point about mediation is that it is not formalised, it is down the phone, it is on an email, it is resolved before the matter comes officially in front of the committee.

Q20 Mr Olner: Do you have a view as to why Members of Parliament are specifically banned by local authorities from taking part and making representations or taking part in any mediation?
Mr Bish: I have no a view on that and I think that we have been down the ward councillor route and the ward councillors, who may find themselves sitting on a committee are properly, in my view, disbarred from that committee because of their possible partiality, but they should absolutely be entitled to be an advocate for their own wards and I cannot see that a Member of Parliament should not be, but perhaps I am straying.
Mr Olner: It would be nice to get it on the record.

Q21 Anne Main: You mentioned vicinity. Do you have any concerns that vicinity is so loosely defined and some areas do not exercise vicinity?
Mr Bish: I believe that vicinity will solve itself in due course. It is very bad to define vicinity because there will always be exceptions. Hard cases make bad law, or whatever the expression is.

Q22 Chair: The Government's view is that the system of fees needs to be self-financing, that is it should be neutral as far as local authorities are concerned. I know that businesses are complaining that the fees are too high: local authorities are complaining that their funding is too low. Do you have any comment on the notion of it being self-financing?
Mr Alambritis: We think it should be self-financing, but within that, there could be a smarter approach. In Vermont again, for example, they have one class, two classes, three classes whether it is on premises, off premises, whether it is just beer and wine or liquors and so on. They have been a bit smarter with the type of licence and I can certainly send a note to the Committee about the Vermont approach. The other point I want to make is that a lot of small businesses are run from home now and they have been reluctant to advertise the fact that there may be some liquor or that they are in that type of business. We need to be aware of that. It has also been difficult for small businesses to have to provide forms to scale. The Minister said that there would be a £2 billion saving, but we are not sure to whom at this moment. Local authorities are busy recruiting licensing officers and small businesses are busy paying a bit more for their licence fees, so we do not know where the savings have gone.
Mr Bish: I should briefly like to add to that. The local authorities are obviously responsible for their new responsibilities, are taking them seriously, but the more work that they take to themselves, the more it will cost and that has to go into the equation. We have to look at what was possible 12 months ago and what it will cost in 12 months' time. It is the same pubs and the same people and the same circumstances, so it should not cost more, but I fear it might and that is the concern that we have about extra costs.
Chair: Thank you both very much. I am sorry it has been rushed, but we do have your written evidence which of course fleshes out a lot of the points that you have made. Thank you very much indeed.

Witnesses: **Councillor Audrey Lewis,** Chair, Licensing Sub-committee, Westminster City Council, **Mr Andrew Fisher**, Head, Licensing Unit and **Tony Kelly**, Project Manager, Bolton Metropolitan Borough Council, examined.

Q23 Chair: Welcome. May I make the point that we have your written evidence, so we do not need to go over points again which you have made in the written evidence. Members have that and will have read it. May I also just ask each of you to introduce yourself starting with you, Mr Kelly?
Mr Kelly: My name is Tony Kelly. I am employed by Bolton Metropolitan Borough Council as Project Manager for what has been termed the Licensing Act 2003 Project.
Mr Fisher: I am Andrew Fisher. I am the Group Manager with day-to-day responsibility for the licensing unit and therefore for the implementation of the Licensing Act in Bolton.
Councillor Lewis: I am Audrey Lewis. I am the executive Cabinet Member with responsibility for community protection and licensing in Westminster.

Q24 Mr Olner: We have heard, both from evidence that we have obtained and certainly through newspapers that local authorities are struggling to get their licence applications through their licensing sub-committees in the appropriate time. Why is this? Surely the demand was predictable. Was it the Government's fault or the local authority's fault?
Mr Fisher: I think it is true to say that the demand was predictable: the difficulty has been created because lots of the licences came in towards the end of the process. That was probably quite predictable. That in itself has resulted in a large number of the applications, which then needed to go to a licensing sub-committee hearing, all needing to be arranged within a fairly short period of time. I think it is that that has caused the difficulty.

Q25 Mr Olner: I know from my own local authority that local councillors have worked tremendously hard and put in a lot of hours trying to get the licences right.
Mr Fisher: Indeed.

Q26 Mr Olner: Do you think there should be scope to have those licence committees enlarged somewhat? They are restricted in size. Should they not be enlarged, so perhaps the load could be spread a bit more over other local council members?
Councillor Lewis: We certainly lobbied very hard. If you remember, the original Bill said only 10 members. We protested strongly and got it up to 15. I think in a sense the horse has already bolted, because we needed the ability to have more members during the predictably very challenging time of transition; it is less important now because hopefully things will not come in at the same rate again. If I could just refer to your earlier question, far from being predictable, we had extensive talks with the licensed trade in Westminster and the national association and were led to believe that it would be front-loaded rather than back-loaded. So to get nothing at the beginning and 40 per cent in the last week put our resources under an enormous challenge.

Q27 Chair: Do you have an understanding of why that happened?
Councillor Lewis: I think it was a combination: very late regulations coming out, guidance coming out late, regulations coming out at the last minute, a much more complex form than anybody anticipated, the fact that a lot of people did not realise they were going to have to get new plans drawn, lots and lots of people turned out not to have

a current personal licence and our magistrates were inundated with people doing transfers because they suddenly needed to get a personal licence to become a designated manager; lots and lots of problems there. Partly also I think, the fact that if you did it in February, you would have to pay again next February and this was a disincentive.

Q28 Mr Olner: You talked about lobbying. Which department of government did you lobby? Was it the ODPM or the DCMS?
Councillor Lewis: A combination of both of those, plus through our Member of Parliament. We made representation when the Bill was in the House of Lords on these points. When I say both DCMS and ODPM, we wrote to the ODPM on the point about numbers of councillors and said "Look we're an excellent council, can we please have the flexibility to have more councillors, because of the pressure ours will be under?'. They referred the letter to the DCMS who acknowledged it and a year later we have not had a reply.

Q29 Mr Olner: So you think the ODPM should have kept their eye on the ball and that is where they should have been increased.
Councillor Lewis: It might have helped, certainly in that regard.

Q30 Mr Lancaster: The councillor has outlined why she feels that some 40 per cent of her licences were in the last week. Can Mr Kelly and Mr Fisher perhaps outline why they think their licences were so late and also whether it would have made any difference if the application forms or the guidance had been issued that bit earlier?
Mr Fisher: Human nature is part of the answer to that question. I think there was a tendency to ignore it in the hope that the dates might move or simply because people did not get round to filling the forms in until there was an urgency about it.
Mr Kelly: It is just a cash flow thing for small business in a lot of cases. They would rather spend £1,000 or £1,800 in August than incur it sooner than they need to in February.
Councillor Lewis: May I make another point? The forms were difficult. We did a lot of publicity beforehand and tried to be helpful. I was asked by my local Japanese restaurant whether I would help them with their application and I told them precisely what I thought should go in every section; I did not actually fill out the form. They got it back with five mistakes which I had not been able to predict. They were very prescriptive and there was no slippage. We should like to have been allowed to say "Oh that's not going to affect the outcome" and proceed.

Q31 Sir Paul Beresford: What was the reaction of your community halls and your church halls? They are mostly run by volunteers. The ones I have come across in my constituency have shrieked with horror at the complexity of form, the fact that they are volunteers and so on and so on. Have you had the same reaction?
Mr Fisher: Generally that sector has found the process difficult to deal with. An incident has occurred recently in Bolton where a group has taken the temporary event notice route and wishes to perform a play, but they want the play to run for five or six nights during the course of a week and of course that cannot be covered by one temporary event notice. They will either have to have a break in the middle of that and apply for two temporary events notices or go for a full premises licence. So I think it is an area where it has caused some problems.

Q32 Sir Paul Beresford: Do you think the temporary event notice limit should be hugely increased? Do you think it is sensible to set a *de minimis* level, below which a small hall does not have to apply at all?
Mr Fisher: That is a possibility, or perhaps to differentiate between theatre groups, for want of a better term, and those who are providing different types of regulated entertainment which might be more disruptive to local residents, or where it involves some other type of activity.
Mr Kelly: If a terminal hour were attached to temporary event notices, which would be 10 o'clock or 11 o'clock in the evening, and a different view taken upon those, then that might simplify it for the church groups and amateur groups.

Q33 Alison Seabeck: You obviously had a flood of applications at the end. Do you think anything could have been done to incentivise businesses to respond more quickly, perhaps in the same way as the Inland Revenue advise people to get their self-assessment forms in, some sort of cash incentive to do that earlier?
Councillor Lewis: I should like to see an early payment incentive. I should also like there to be some incentive for them to pay at all, because there is absolutely nothing in the regulations which makes them have to pay and we would have to pursue any debts through the civil courts and that would be an additional burden.

Q34 Dr Pugh: May I quote some evidence we have had in front of us here, which is from an applicant and says "I had all my documents with me, everything was in order, the only thing I did not do was get the back of my passport photo signed by someone known to me who would state it was a correct likeness". The application was rejected. I should have thought it was fairly easy to tell whether something was or was not a photograph of a person.
Councillor Lewis: That signature on the back is a complete fiasco anyway. There is absolutely nowhere in the form where they are asked to say who that person is. They could have obtained any signature and it would have done, there is no room on the form for a date of birth to be put in, anybody could apply because the police have no way of checking; they have been totally reliant on the magistrates court all these years and checking with the date of birth evidence in front of them. All these things have gone in the new organisation.

Q35 Dr Pugh: It is technically an error and the form gets rejected for any kind of error. There are minor errors and there are major errors but there does not seem to be any uniformity between local authorities and whether they interpret it as a minor error and they take the application, or whether they send it back through the process all over again. Did you seek further clarification on what is an allowable mistake and what is not an allowable mistake from anybody?
Councillor Lewis: We certainly did. On plans, we tried very hard to get much more flexibility about what kind of plan was acceptable, because that was putting people to a great deal of unnecessary expense apart from anything else, and we would have liked to have seen a lot more flexibility. We did not get any guidance on a lot of these things. We have asked for it on many occasions, we have written letters pointing out the problems we were encountering and not had a response.

Q36 Dr Pugh: So what is happening? Is it a case that people in different authorities are making up their own minds?
Councillor Lewis: We eventually got 93.2 per cent of our applications regarded as valid and that is because the more we went on, the more we tried to find good excuses. We would go back to people, we would say "We'll hang on to them; all you have do is get a cheque in. Come in and see us, sign it". We would not send stuff back.

Q37 Dr Pugh: What percentage of people ended up putting in their applications more than once, do you think? Just a guess.
Councillor Lewis: Probably not a lot putting them in *de novo*, because we tried to help them along the process. We had seminars during the process, we went down to the Chinese community and other communities and sat there and helped them fill in their forms. We were bending over backwards to try to get as many as possible in correctly.

Q38 Dr Pugh: But there is no guarantee that what you did is what other local authorities did. Other local authorities might have applied the rules far more rigorously and less sensitively.
Councillor Lewis: It is possible.
Mr Fisher: On that point, we would guestimate that we probably rejected round about five per cent of the applications, largely for failure to advertise properly. We had our enforcement team inspect notices which were displayed on premises and it was those inspections which generated the largest number of rejected applications in Bolton. Just to pick up on the point that was raised before, I like to think that we approached it in a sensible manner and that that sort of very minor fault in an application would not result automatically in rejection. But we have to remember that we have employed additional members of staff, we have given them very clear guidance on what constitutes an acceptable application and what points should cause the application to be rejected. It has not always been possible to take that entirely practical and pragmatic approach with respect to each application.
Mr Kelly: Generally, things could be resolved within a very short timescale. For example, if we received an application with a copy of the justices' licence which was not appropriate, or was out of date, or what have you, we would contact those people and if they could turn it round in a reasonable period, then we still accepted that application.

Q39 Martin Horwood: Clearly there has been a huge problem with the timing of the applications and the volume of applications and collectively we seem to be laying quite a lot of the blame at the door of DCMS in terms of the level of bureaucracy and the timing of the regulations and the timing of guidance, but one of the interesting things in the Federation of Small Businesses' evidence to us was that they have detected quite huge variations between local authorities, who are obviously in the same position with respect to DCMS. For instance, they say generally local authorities with good guidance and clearly accessible information on their websites have had a better response rate than those which did not offer good guidance and in some cases no guidance at all. They quote variations between 77 per cent of all possible applications and as low as 30 per cent of all possible applications coming in within one week of 6 August deadline. Do you think you did it better or worse than other authorities of which you are aware? I think I can predict the answer. If so, what kind of publicity and marketing of the process worked well?
Councillor Lewis: By definition, people who have made representations to this Committee have probably been very thoroughly into the whole matter. Licensing is very important in the City of Westminster and we took it very seriously, we spent a lot of time and trouble to try to get our local policy right for instance and to get the consultation on the local policy correctly done and then to try to interpret that for people. We sent out a copy of our policy to every licensed premise for comment, not just the trade bodies and so on. Some local authorities did not think licensing was as important, and probably did not all the way along the process. It probably did not have as high a profile or as much will; indeed I met quite large London local authorities who did not budget to spend a single extra penny on this process. We decided we had to do it at a level which was appropriate and therefore set aside really substantial sums in order to do that. I think it all follows along from there.
Mr Kelly: Where we were able to engage with local groups, and I am citing say the registered clubs in Bolton and the off-licences, we met with them at group meeting et cetera and we explained to them what we perceived the benefits of applying early to be and in a lot of cases they did. With respect, it was a great number of the larger pub groups, the brewery groups who caused the August rush and it was rumoured that was a tactic undertaken by these groups to try and to flood the system at the eleventh hour. I am not saying whether it was or whether it

was not; that was the rumour. It certainly was something which did happen and it was the larger pub companies and pub groups which did put in massive numbers of applications right at the end.
Councillor Lewis: They also put in absolutely blanket applications which took no account whatsoever of whether it was a residential area or a non-residential area; they came in identically at the last minute.

Q40 Martin Horwood: You did not quite answer my question about what techniques you think were the most successful. Councillor Lewis has a little bit in saying that you communicated your policy to every single possible applicant. Are there any other techniques that you thought were successful?
Mr Fisher: I think local authorities will have taken different views. My view is that the important issue was one which Councillor Lewis has mentioned, the attitude that the local authority took to the process, the importance which was attached to delivering this process and recognising very early on in that process that it was going to generate lots and lots of work, that there was a major administrative task to be performed and to put in place the staffing structures and the mechanisms to enable that to be done satisfactorily. In Bolton, a massive amount of our information probably did not find its way onto a website, but we very actively engaged with the local press and ran a series of articles to try to encourage businesses to submit their applications, warning them of the consequences of not doing so, telling them that if they got their applications in early, they could have a one-to-one meeting with a member of staff who would actually walk them through the process and they would come out at the other end with a satisfactorily completed application form et cetera.

Q41 Martin Horwood: Do you feel that kind of proactive attitude was encouraged by Government?
Councillor Lewis: Initially, no.
Mr Kelly: It is something we did to try to make life operationally better for ourselves. We proactively sent out application packs which included a step-by-step guide for applicants as to how they should go about filling in the forms, not just the 21-page form but the other forms which were necessarily completed alongside that, so they were all referenced and people were given fairly simplistic instructions on how to fill in the whole collection of forms.
Mr Fisher: I think that Government could probably have done more to help that process, but I am not sure that it should be seen as the responsibility of Government to encourage that type of good practice. I think they could have helped by having more timely guidance, having the regulations published a little bit earlier in order that we could have been geared up better to discharge that responsibility. Had we had that, then I do not think that Government could have been criticised for it. I think it is the responsibility of the local authority to grasp that task and to deliver it.

Q42 Chair: One of the other bodies putting in evidence, the Network of Residents' Association, has suggested that liaison committees should be mandatory. May I ask your two authorities whether you had liaison committees and whether you found them useful?
Mr Fisher: Bolton did not.
Councillor Lewis: We have had a committee with the entertainment industry, quite a broad group, plus residents, for many years but I do not think it could possibly have coped with 3,000-plus applications, because it would have had to be in almost permanent session if it were going to go boring into any of those at all.

Q43 Anne Main: Numerous points you have just been discussing keep touching on cost: officers, enforcement and dealing with it. Would you say this is going to cause you a budgetary deficit on councils? Do you feel the fees are going to cover it? Do you feel this is going to mean a rise in the council tax? Is it over onerous financially for a local council to deliver?
Mr Kelly: We have done certain projections in Bolton and we are very much in the dark as to what the enforcement costs are likely to be. We are still liaising with our fellow enforcement bodies. Without saying too much, it looks as though we shall be there or thereabouts. We could be slightly under, slightly over, but whether we recover our overall costs will depend upon the enforcement costs; it is marginal based upon the enforcement costs.
Councillor Lewis: The structure of the entertainment industry in Westminster, where you have a large number of existing very large venues which already open late at night, very drink-led, means that enforcement costs are, by their nature always going to be high. A great deal of work needs to be put in on those sorts of outlets and we have therefore seen clubs whom we might have charged in excess of £20,000 going down to a few hundred pounds, without even the accelerator put on them because they have been defined as nightclubs. We cannot see, if we are going to do anything like the sort of job we are required to do, that we will not be millions out of pocket unless something very miraculous occurs.

Q44 Chair: You would support a variable fee structure rather than a flat one.
Councillor Lewis: I would support a very, very, very wide structure. I think the problem has been that we have tried to get all sorts of different kinds of premises into a very narrow band. I think particularly capacity and hours of working should be included in that and there has been no discussion on them so far.
Chair: Thank you very much indeed; we have to move onto the next round of witnesses.

Witnesses: **Councillor Chloe Lambert**, Deputy Chairperson, Local Government Association and **Mr Patrick Crowley,** Licensing Manager, Royal Borough of Kensington and Chelsea, Adviser to LACORS, **Mr Philip Kolvin,** Chair and **Mr Jeffrey Leib**, Vice Chair, Institute of Licensing, examined.

Q45 Chair: Would each of you just say who you are?
Mr Crowley: I am Patrick Crowley. I am the Licensing Manager at the Royal Borough of Kensington and Chelsea. I also represent the Association of London Government on the DCMS Advisory Committee and am a member of the LACORS national licensing policy forum.
Councillor Lambert: Good afternoon, I am Councillor Mrs Chloe Lambert. I am here today as Deputy Chairman and independent group leader of the Local Government Association. I am also a member of Aylesbury Vale District Council in Buckinghamshire. I sit on that council's licensing committee. I also serve on that council's development control committee. I also have to tell you that I am a serving magistrate on the central Buckinghamshire bench, that is in the Thames Valley Commission and I used to sit on that bench's licensing committee panel circa 1995.
Mr Kolvin: Philip Kolvin. My day time job is as a licensing barrister, but I am here as the Chairman of the Institute of Licensing.
Mr Leib: My name is Jeffrey Leib. I am one of the vice-chairs of the Institute of Licensing and I am also the Licensing Manager at Watford Borough Council.

Q46 Chair: May I ask the first question then which is about the LACORS guidance not being legally binding? We have been told by some witnesses that, as a result, local authorities have cherry-picked from it to suit them. Do you think the guidance should be legally binding and do you think that authorities have been cherry-picking?
Mr Crowley: It is in fact advice rather than guidance—I do not know whether there is a difference. LACORS receives queries and they have a number of policy advisers around the country. The policy advisers, who are people like me, licensing officers, give their view and LACORS creates the advice. As such, I think it would be very difficult to make it legally binding.
Mr Kolvin: My take is that there is too much guidance out there. The national guidance, the Secretary of State's guidance, is 200 pages long. There is a great deal of confusion out there as to what the proper procedures are and there has been a lack of clarity.

Q47 Chair: To amplify on that, would you think that the guidance that the Government have put out has been too prescriptive or not prescriptive enough? We have had particular complaints about the requirements for advertising and also the rules about the hearings and procedures.
Mr Kolvin: There are two different things there. The advertising requirements are too restrictive. Some questioners asked before about latitude. I am a lawyer and I get asked a lot of questions by the trade and local authorities about latitude. The problem is that in the way the Act is drafted and the regulations are drafted all these points are jurisdictional. So if the advertising notice is not on light blue paper in Times 16 point Roman font, then the application is not duly made. As an institute, we asked the Government to write in a slip rule and discretion, so that something which was basically compliant was allowed through. Unfortunately, the Act and the regulations are drafted in exactly the contrary sense, so unless it complies to the letter, there is no jurisdiction to determine the application. So far as the guidance is concerned, this is the Secretary of State's guidance, the two big problems are on stress areas and hours. The perception out there is that the Government are blowing hot and cold in initially saying that in order to reduce the problems of people emerging from premises *en masse* longer hours are needed; the more lately by letter of 13 September saying that really the views of residents are paramount. No-one is quite sure what the rules are and that is going to be a very big problem when it gets to the magistrates' court. So far as nuisance in the public domain is concerned, the guidance was that in essence licensing is only relevant when it is something to do with stress areas. There are endless arguments about what a stress area is and whether that bit of guidance is complied with or not, whereas the previous position was simply that if premises impacted environmentally on their surroundings, then it was a relevant matter for licensing authorities. It seems that by drawing up the guidance in that particular way discretion has been removed from local authorities to deal with things in their wisdom on a discretionary basis.
Councillor Lambert: From a member of a licensing committee's point of view who also sits in a magistrates' court, I would say that the guidance, both to local authority members and to magistrates, has been confusing. The LACORS guidance has been very, very helpful, but it is specific guidance to the local member that needs to be expanded on.
Mr Crowley: I would echo what Mr Kolvin said about the Secretary of State's guidance, specifically in relation to longer licensing hours, where licensing committees have now sat through the transitional period to a large degree and have had regard to what the guidance says, which is to go for longer hours. Then we get a letter from the Secretary of State in mid-September saying, "We didn't really mean that; we meant listen carefully to what residents say", which is a big conflict. Perhaps, if that is the way the Government view it, it is a bit late to say it.

Q48 Anne Main: The premise behind it is staggered opening hours or staggered coming out times. Can you see anything in the Act that would deliver that because it does seem a bit contradictory? Do you think things could have been made clearer on how local authorities could have delivered this staggering?
Mr Kolvin: There is a very serious problem at the heart of the legislation and we are very short of time, so may I speak bluntly. Parliament effectively was told that a zoning experiment in Scotland had not worked and we needed to get away from zoning, in other words, fixed hours. It was not quite right, that

was not how it had been in Scotland. The experiment which had failed in Scotland was a different experiment of street designation orders, where different streets were designated in a different way. The Act will not deliver staggering: it will deliver the opposite of staggering. By encouraging longer hours, what is going to happen is one commercially-driven later hour and it is going to be worse than the current system because it is not going to be an hour which is clear. Whereas previously the police at least knew that chucking out time was 11 o' clock, now it could be any time according to how business is going on that night.

Q49 Anne Main: Australia and Canada have backed a full study on exactly what you have just said.
Mr Kolvin: Exactly. The way to handle this is to allow local authorities to treat matters strategically, but the Act prevents local authorities treating matters strategically because they have no discretion in the absence of relevant representation, so they have no means of taking an overview and intervening in the system to ensure that there is a sensitive removal of people from premises according to some pre-ordained time. I have to say that my own view, as a lawyer dealing with these, is that the Act is likely to be counter-productive; I hope I am wrong.

Q50 Chair: The evidence we have had from the Government, ODPM, is that licensing authorities report there is genuine variation in licensing hours rather than a shift to a single later terminal hour. Is what you have just said based on your supposition or actual evidence?
Mr Kolvin: It is based on talking to an enormous number of people in the industry: lawyers, industry people and local authorities.

Q51 Chair: Based on reality or based on what you think will happen.
Mr Kolvin: Based on reality. The position is that one can apply for longer hours. The guidance has been to give the longer hours, the longer hours are, on the whole, being awarded, except to some extent in the metropolitan areas where councils such as Kensington and Chelsea and Westminster have stress policies. So there is a move towards longer hours, but what is effectively going to drive the terminal hour is business. You are not going to leave your bar open when there is nobody sitting in there: it is business which will determine when the premises actually close.
Mr Leib: To add on to that as well is the fact that certainly a lot of the larger organisations have put in blanket applications. Although there may be a desire for different opening and different closing hours, within one town where there may be a number of operations from one business, they are actually all applying for the same hours.

Q52 Alison Seabeck: I have a couple of areas to ask you questions on: the first is the regulatory burden. The Act was intended to be a deregulating measure bringing six regimes into one. Is your view that this has been successful in that particular capacity? Do you think that once we get through this transition period things will bed down and it will actually work better than what was there before?
Councillor Lambert: I think things will take a long time to bed down and speaking of the guidance which has been issued from the DCMS, it has not really been sufficient to help local authority licensing committee members.
Mr Crowley: The experience we have had as well is that the licensing committee have had its hands tied to a certain extent by the Secretary of State's guidance and because they have had to have regard to that have given decisions which residents are not happy with. The review process, which cannot start until 24 November, is going to have a significant impact.

Q53 Alison Seabeck: Councillor Lambert said "a long time". What do you mean by "a long time"? Months? Years?
Councillor Lambert: I have people saying to me "Chloe, why can't you go along and speak about your local pub". I have local publicans saying to me "I want to do X, Y and Z". That is where the blanket licensing hours change, with karaoke, live music, 2.30am. Most people in my area do not want that, but licensing applicants are being encouraged to do that by the Act, which is setting up a tremendous amount of work for local authorities who have over-stretched resources.
Mr Leib: The point I want to make very briefly is that the actual principle of consolidating six separate regimes is in itself sensible and putting it all within one house. There are obviously difficulties about the mechanics and how that has been achieved.
Mr Kolvin: I should like to agree with Jeff and add that I do see a difficulty in future, that there is something of a void in the local authority structure at the heart of the legislation. It is a marvellous idea to give the power to local authorities, but a lot of protagonists who are within this system are going to have their own roles diminished. If I may just pick three examples: one is the ward councillors who have basically been ruled out of this system and a lot of them feel a great sense of grievance; they are devoted to their areas but cannot really play a role. The second example is members who have been left largely untrained under this new regime and there are not a lot of resources out there to train members and of course, they do not get a discretion unless somebody makes a relevant representation. Our perspective in particular is that of the licensing officer. There is genuine dispute around the country, amongst the lawyers in the industry and in local authorities themselves, as to whether the licensing officer is entitled to make a representation to his own licensing committee as to what he has seen, secondly as to whether he is entitled to recommend to a licensing committee what to do in X, Y, Z circumstance and thirdly, if a licensing officer sees breaches of licence conditions actually being committed, whatever they may be, to report it, institute a review or do anything about it. All of that is because of the way the legislation has been written

and there is a real danger that the department which should be at the fulcrum of this regulation and management of the night-time economy has had his powers actually stripped away by this legislation. To me, that is a serious structural flaw which is going to make future work on the legislation quite difficult.
Councillor Lambert: Unfortunately, it has also increased lack of accountability for the licensing committee member, particularly the local member and that is where I come back to: local members need to have their role further clarified.

Q54 Chair: Local authorities have always determined these things in a quasi judicial manner: hackney carriage licences for example are quasi judicial and always have been. To that extent it is not different.
Councillor Lambert: It is different to us because some of us also sit on other quasi judicial committees such as development control, where we are getting different advice and different guidance, specifically as far as the local member is concerned. That is what needs to be sorted out because the public have to deal with us. We all work for the same council in their eyes; the council is one body whoever is sitting on it.
Mr Kolvin: Very frequently there is a triangulated position, an application which is not acceptable would be acceptable if only conditions were applied or something were negotiated away. If you strip the licensing officer's ability to make representations out of that equation, it ends in conflict when instead there should be conciliation. This argument is a very important one for the working of the legislation.

Q55 Mr Olner: Has mediation played any sort of role whatsoever between those seeking the licences and the committees granting them?
Councillor Lambert: Certainly in my authority's experience and that is the one I know most about, we have done our utmost to involve all sides, both the licensed trade, people who run local shops. Through the LGA I know vast experiences, different experiences throughout the country on a number of different councils, different sorts of authorities. At the same time, I am supposed to be concentrating on the economic development, which I am sure we all would support, tourist trade and so on. You have had evidence submitted about that from previous speakers today.

Q56 Mr Olner: So did mediation work?
Councillor Lambert: Mediation is considered to be slightly different. Mediation to me, as a licensing committee member means our head of licensing, who is over-stretched and under-resourced, not an uncommon position—

Q57 Mr Olner: Is this not an historic sort of knock back?
Councillor Lambert: No.

Q58 Mr Olner: Here you are, an ex magistrate, sitting next to a lawyer and I would suspect that neither of you really wants mediation because it is doing you out of a job.
Councillor Lambert: No, no; it is the opposite, certainly as I am still a magistrate.
Mr Kolvin: No; it is the opposite. As an institute, when we responded to the regulations, we asked for two things. We asked the Government to give a longer lead time between representation and hearing, at the moment it is 28 days, to allow more time for mediation and secondly to provide a better structure for the giving of information by both parties so they could see where each side was coming from. However, because that is not happening, the dispute is being taken into the council chamber, whereas really many of these disputes are easily resolvable if only you could get the parties talking at an earlier stage. I know this from handling appeals on behalf of licensing authorities: once you get parties talking, so much more can be resolved. However, the regulations are structured so as to engender conflict rather than conciliation.
Mr Crowley: My own experience is that we have been under-resourced and over-burdened but where we have had the opportunity to involve mediation, it has worked. I see in the future, when the workload has evened out a bit, more mediation and experience shows it has worked.

Q59 Mr Olner: Do you think then, as we understand the mediation role more, that there will be a role there for the local ward councillor and even the local Member of Parliament?
Councillor Lambert: Absolutely. I would say that was of paramount importance, the lowest local level.
Mr Crowley: Absolutely.
Mr Kolvin: Certainly

Q60 Anne Main: Following Councillor Lambert's observation on tourism, do you feel, looking at tourism and the way it develops in some city centres, that there should be a greater ability for the local council to be able to decide policies which are suitable for tourist areas?
Councillor Lambert: Yes.

Q61 Anne Main: So you have more flexibility?
Councillor Lambert: We do have a certain degree of flexibility here, because I hope all local authorities have drawn up their own licensing policy statements, policy documents. When those policy documents were drawn up, they actually probably, and I include myself in that, were not aware of the vast realm of things that you have to consider when trying to increase accountability and to bring licensing more into the democratic arena. To my mind that was what the Licensing Act was supposed to do: make us all think more about it in terms of safer communities.

Q62 Anne Main: Do you think it did?
Councillor Lambert: I think to a certain degree it has, but it still comes back to local determination at the lowest local level and that means the local member not being disqualified from talking about a licensing application from a publican in her own village, which has happened to me.

Q63 Chair: Councillor Lambert, you are also here representing the Local Government Association.
Councillor Lambert: Absolutely.

Q64 Chair: May I ask what the LGA is doing to make sure that councils and councillors are aware of the additional powers they are actually given under this legislation to manage the small number of establishments which are responsible for the largest difficulties, that is the ones selling alcohol to people who are already drunk, for example. Are you doing training programmes for councillors?
Councillor Lambert: We certainly are; I have chaired many of them and so have my colleagues from Westminster.

Q65 Chair: I hope you will concentrate on using the powers that are there to the utmost.
Councillor Lambert: We do, but it comes down to local evidence again.

Q66 Anne Main: Do you think you have enough powers? Has this Act given you enough power, or do you feel it has in some way limited your power?
Councillor Lambert: I think it has potential for increasing our power; we just need to draw back and review it. I am very glad that we are able to give evidence to you here today, because I have seen the angst which has been caused most of all, if I may say so, to members of the public who do not understand what is going on.

Q67 Mr Betts: What is the LGA going to do in terms of its self-review and how local authorities have performed? Are you going to do a review and then maybe issue some advice yourselves?
Councillor Lambert: Yes.

Q68 Mr Betts: And draw out examples of good practice and give those to other authorities which may not have been quite so good.
Councillor Lambert: We do that already and have been doing so for quite a long time, even before the Licensing Act took effect. I know that our member authorities have run umpteen training courses; I know because I have been on them. I know from evidence already submitted by the LGA that that is precisely what local authorities do and are faced with, but it all comes back to limited resources, over-stretched resources.

Q69 Chair: You will be aware of the other evidence put forward to this Committee, not just verbally but written evidence which is on the website. Clearly from the trade's point of view a very strong message is coming through that there is a great variability between local authorities and a need for those poorly performing authorities to learn from the better performers.
Councillor Lambert: Absolutely. It is all part of the improvement agenda which the LGA is all about.
Chair: Indeed. Thank you all very much. We are now moving on to the Ministers. Thank you.

Witnesses: **James Purnell,** a Member of the House, Minister for Media and Tourism, **Mr Stuart Roberts,** Licensing Team, Department for Culture, Media and Sport and **Mr Phil Woolas,** a Member of the House, Minister of State (Local Government), Office of the Deputy Prime Minister, examined.

Q70 Chair: Thank you very much, Ministers. Could you each say who you are and identify yourselves.
Mr Woolas: Phil Woolas, Minister for Local Government.
James Purnell: James Purnell, Minister for Licensing.

Q71 Chair: Excellent. I will leave it entirely up to you to decide which one of you answers which questions, or both. May I start off? You introduced a system which has required all the licence holders to apply for licences at the same time, even if they already held licences which were not due to expire. We have heard from the Federation of Small Businesses that they would have preferred people to have been applying as the licence expired. Why did you choose the route of everybody having to apply at once and why did you do it in such a short space of time?
James Purnell: I think the difficulty of having two regimes operating at the same time would have meant they would have caused confusion for the public, but in particular for enforcement agencies. So if you had somebody operating under an old licence, they would have been subject to one set of laws, if you had people who had applied for their new licence, they would then have been operating under the new laws with different powers to the police. The idea of having a concurrent running of the system would have been very, very difficult to operate in practice. It would have been possible to have different groups of people applying at different times or to have a longer period; all of that would have been perfectly possible. I think in fact that in Scotland they are having different sets of deadlines. It was felt that having one clear deadline was the best way of communicating that simply to people and I think that the fact that, thanks to a lot of work from council officers and licensees, we have now got to 97 per cent does suggest that the system did not fail completely.

Q72 Chair: We have been hearing a huge amount of criticism about the way in which local authorities were sent the application forms extremely late and indeed also about the way in which the guidance that was coming from the Department changed over time

and the order in which the guidance came out, so that many authorities had to draw up their local licensing policy before all the guidance was out. Can you explain why, given the length of time the Department actually had, why there were so many problems in providing local authorities with the forms and the guidance?

James Purnell: I think it is worth saying that this has been a huge exercise to change a piece of legislation which dates back to World War I, which brought six regimes into one and which has involved massive changes to the system, going from something with lots of centrally set hours executed by magistrates, to something with local flexibility operated by local authorities. In terms of the guidance itself, we have been trying to respond to people's concerns all the way through. People have been coming to us and saying, for example, "We want local authorities to be more flexible in this, that or the other" and we have therefore issued extra bits of guidance and extra bits of evidence. We could have issued one set of guidance and then said "That's it, it's your problem, deal with it", or we could have done what we have tried to do, which is to respond to concerns as we have gone along and then you get accused of having given different bits of advice at different times. We thought it was better to respond to people's concerns.

Q73 Chair: But one very specific allegation is that early on in the process, the guidance has been given that longer licensing hours were preferable and then later on, that the views of residents should be given more weight and most residents generally speaking want shorter hours. Was there a change in view? Is that a clarification or a change in policy?

James Purnell: No, that was a re-statement of the fact that where there were objections from local residents or indeed from other people, licensing committees were not just within their rights, but had a duty to make a decision based on the four licensing objectives. So that came out of the LGA in particular coming to us and saying that they had some local councils who had concerns that there was a presumption for longer hours over people's objections and we made it absolutely clear to them that there was no such presumption where people had objected.

Q74 Alison Seabeck: May I ask what representations the ODPM made to the DCMS when it became apparent that there was only going to be a three-week time slot between the regulations being laid and the applications beginning?

Mr Woolas: Well, it is very fair to say that throughout the whole process, there has been a very close working relationship between the two departments, often on a daily basis; we have tried to ensure that that organic link has been there. We were able to track the figures for applicants with DCMS to the point where, as has already been said, we estimate around 97 per cent of the establishment have actually now applied. There was never any sense of anything like a crisis which was perhaps generated in others by some of the public comment.

Q75 Alison Seabeck: I take the point you have just made about some local authorities managing the extra capacity, but as this process was evolving, did ODPM do any work or talk to the LGA in terms of trying to find out how local authorities would manage this increased work? We heard evidence earlier that some local authorities increased numbers of staff so their capacity was built up, Westminster for example, whereas we know others clearly did not and have not coped as well. Was any work done by the ODPM?

Mr Woolas: I do not have not figures in front of me, but there were significant, let me put it that way, representations from individual local authorities and of course, through Members of Parliament on their behalf and discussions between the LGA and ODPM and of course LGA and DCMS and ODPM to look at the administrative impact and the cost impact both in the short, the medium and the long term to try to ensure that the regime was self-financing and to try to ensure that local authorities were in a position to administer the scheme properly; indeed the latest representation I think was on Wednesday or Thursday last week to update us with the LGA's viewpoint.

Q76 Anne Main: You said you were taking references from those other authorities. How about the police authority who have moved their position somewhat in terms of being able to police. Have you looked at the greater resource implications of that or how this could ameliorate the situation?

James Purnell: I am not quite sure what you are referring to by the police authority changing its position.

Q77 Anne Main: Different police authorities have since come out saying they cannot police it, that the implications are too huge for their resources. I just wondered whether you had had any further meetings about this. I know that Hertfordshire is saying this and I just wondered whether you had had any further meetings to try to reassure the public or police that these things can be dealt with.

James Purnell: We have regular meetings both with the LGA and with the police themselves. The police through ACPO and local government through the LGA and LACORS are represented on the High Level Group which I chair, as in fact are ODPM, so that has met on a regular basis all the way through. That has also been supplemented by meetings of our Advisory Group which operates at official level and also ad hoc meetings with the police and the LGA as has been necessary. There have been a number of those meetings. Police funding is obviously something for the Home Office rather than ODPM or the DCMS, but clearly there will be significant savings from this Act for the police from the reduced burden of having to go to the magistrates' court for example, as well as potentially different requirements from having a different licensing regime. It is worth remembering of course, that the Act came from concerns from the police that the two spikes at 11 o'clock and two in the morning were

causing flashpoints which were leading to extra crime. These issues can be looked at from different perspectives.

Q78 Anne Main: Do you believe the Act will deliver that staggering that the police want?
James Purnell: Yes; the evidence we have so far from our surveys is that staggering is happening.

Q79 Sir Paul Beresford: Have you responded to any of this consultation? Have you made any shifts, any change at all?
James Purnell: Yes, we have. We have announced a review of the guidance, for example, which we have bought forward to 24 November so that we could review it immediately to learn from the experience of the 190,000 or so licences which have been looked at. In the case of circuses, for example, we changed a second appointed day to reflect their concerns. People have made a number of requests to us in terms of being flexible about the guidance, all of which we have responded to whenever we have been able to do so. The village halls made some requests to us, consulted on the limits on the numbers of temporary events notices. To be fair, people would say that where we have been able to flexible within the constraints of primary legislation, we have sought to be so.

Q80 Sir Paul Beresford: You touched on the village halls. Village halls complain about the fees, they complain about the need for plans, they complain about the fact that trying to manage it when they are volunteers made it very nearly impossible—many of them are looking forward to instant *rigor mortis*—and the fact that 12 TENs were not enough. What are you going to do about all of these? Anything? You indicated that you would.
James Purnell: We responded to those concerns by commissioning ACRE to do some research on the actual effect on village halls and we will look at that research.

Q81 Sir Paul Beresford: So after they are dead you are going to revive them.
James Purnell: Well the evidence that we have from ACRE, whom we have met on a number of occasions, is that village halls have applied successfully for their licences and they made it clear to us that they did not want the Act to be delayed for that very reason, because people had put in a large amount of effort and paid fees to be able to get those licences. We commissioned ACRE to do some evidence and research and we will act on the basis of that evidence. We have consulted during the summer about whether to extend the number of temporary events notices and we will—

Q82 Sir Paul Beresford: To what? Thirty-six, 40, 50?
James Purnell: We did not put forward a precise suggestion. We asked people for their views, which is right, and we have had a range of views. We will make a decision based on that as well as a number of different issues, the make-up of the forms, things like that and we have responded to those concerns.

Q83 Sir Paul Beresford: What about the suggestion of having a *de minimis* level for village halls?
James Purnell: The difficulty about having different temporary events notices—

Q84 Sir Paul Beresford: No, no. I mean why not have a *de minimis* level where some of legislation need not apply to village halls?
James Purnell: Well you should let me answer the question. I was about to say that that would require us having different limits for different types of premises and that would require primary legislation. We have not ruled anything in, we have not ruled anything out, we are currently in the process of analysing the responses to our consultation and we will make an announcement.

Q85 Sir Paul Beresford: So you would welcome a deputation.
James Purnell: From whom?

Q86 Sir Paul Beresford: Me and my village hall representatives.
James Purnell: I should be happy to meet colleagues.

Q87 Chair: May I broaden out the point that Sir Paul was making about the *de minimis* rule? One of the points made by the Federation of Small Businesses was that the businesses which had had the most trouble really were businesses where the sale of alcohol was not really the primary purpose, but was additional; they cited florists who deliver flowers and champagne. Are you saying that a *de minimis* rule needs a change in the primary legislation and that if you did it, it could also consider those sorts of businesses as well?
James Purnell: There are two ways to address that. One would be to change the level of the fees, and I will come onto that in a second, but if you were to treat different categories of premises in a different way, that would require primary legislation. Sir Paul was asking about what we have done to listen to people's concerns and representations. Something else which we did was look to people's concerns about the level and type of fees that we were setting. We brought in a multiplier for the big pubs, the kind of vertical drinking establishments, so that they are charged more and we also revised the fees in the light of concerns from local government and agreed to this review which Les Elton is conducting which no doubt has been mentioned to you already today. That will report in November and have some sort of intermediate responses and we will then have a full report in November. As part of that they are already looking at the effect on small shops, village halls, guesthouses and sports clubs. The dilemma here, it is worth stating just very briefly, is that you can either have a very simple system which does not have its own requirement to collect lots and lots of information, which is what we have gone for, we have used the proxy of rateable value and the advantage of that is that it is easy to collect and does not create a lot of extra cost for local authorities. Or you could go for something much more precise and targeted which involves collecting lots of

information, but that cost would then have to be recouped from the premises and the licensees and in effect they might be no better off. If the average cost goes up, they actually have not won anything by having a more targeted system.

Q88 Chair: But there might be a shift from small businesses to big businesses.
James Purnell: You could make changes within the rateable value; you could charge people at the lower end less. However, we have made a very clear commitment that the system will be self-financing, so if you did that you would then have to increase the cost paid by other people within the system.

Q89 Martin Horwood: After the rush to licence application, there is now the rush to issue the licences. What is the legal status of currently licensed premises which applied in time but have not received approval by 24 November?
James Purnell: If they have not received it because the licensing committee failed to process it within two months, then it is deemed automatically granted. If it has been processed by the licensing authority, then I think it is right to say that they are operating legally but they would obviously also want to have their licences in their hands. We have had representations that some local authorities are currently facing trouble doing that. However, our advice is that the majority are coping with that well. We are therefore in discussions with LACORS, which is the body which does this within local government, about whether any extra help needs to be provided to any authority that may be having difficulties and, if there is, whether any contingency plans need to be put in place. This has been raised with us at the last High Level Group and the view from stakeholders was that at the moment they did not think there was going to be a significant problem.

Q90 Martin Horwood: Your view may be that in general authorities are coping quite well. We have clearly heard evidence today that some are coping by trying to shoe-horn the process through somewhat and having to turn down people on quite technical grounds sometimes and there does not seem to be the latitude in the process to allow simple slip-ups to be reconsidered in time. Do you know on what kind of scale that is happening?
James Purnell: My impression is that the opposite is the case. With 190,000-odd premises going through, being administered by lots of different local authorities, you will obviously have examples of where that is not the case and by the very fact of devolving this power to local authorities, you will have different interpretations in different places. My view, from talking to both the industry and to LACORS themselves, is that people have really tried to be as flexible as they possibly can and actually I think I would pay tribute to licensing officers and to councillors for the constructive way in which they have approached this. Of course there will be exceptions to that, but if you ask me what my view is about the generality, my view is that people are trying to be flexible where they are able to be.

Q91 Martin Horwood: We have at least one council, Westminster City Council, which told us that they have had to refuse applications because they did not have time to process them before 6 August. Were you aware of that happening?
James Purnell: If it is an application for a conversion and they did not have time to treat it within the two months, then that would be automatically granted; a contingency plan was built into the legislation. If it was a separate point, then I should be happy to look into it, but that contingency is built into the legislation if people do not have the time to deal with a conversion.
Martin Horwood: There seems to be a contradiction there actually.

Q92 Chair: May I pick you up on the reply you made to Mr Horwood about flexibility? We have been told repeatedly, both by applicants and by councils, that the system is too prescriptive, the prescriptions about the advertisement for example, and also about the timing of the hearings which has then not left enough room for mediation; sometimes mediation has been going on, but has had to be stopped for the hearing. Almost everybody who has put in evidence to us has asked for a slip rule, that is for authorities to be given the power to vary the conditions if it is essentially a technicality. Is the Department looking at that?
James Purnell: On the first point, we are happy to look at all of these points through the review of the guidance and we will also look at your conclusions as a select committee as part of that review of the guidance. That is a genuine attempt to look at areas where things could have been done better and we are already starting to think about what that could be in a whole range of areas. It may be that more flexibility is possible around the kinds of plans which people may be able to submit. It may be that more flexibility is needed around vicinities, the definition of vicinity. It may be that there are other more cost-effective ways of advertising to local residents the fact that people are applying for variations. We are very happy about this and we are not in any way precious about saying we got it all absolutely right. It was an extremely complicated process involving 190,000 applications and bringing together six pieces of legislation, so we are happy to look at that. In terms of the slip rule, we were specifically requested to do that earlier on before the summer and we did not, because we were worried that it would actually make the system less flexible. If we were to have passed a slip rule saying you can be flexible about A, B, C, we were advised that there was a risk then that local authority legal departments might say "Ah, well, they have not said that you can be flexible about D, E, F" and therefore it would have reduced people's flexibility. Instead, what we did was to write to people and say that we were encouraging them to be flexible about this and please exercise that flexibility as far as they can.

Q93 Mr Lancaster: You are saying that at the moment you cannot be flexible on A, B, C, D, E or F, but by allowing people to be flexible on A, B, C, that would mean less flexibility.
James Purnell: No, I am not saying that. We wrote to people saying they could be flexible on all of those things, it was for them to interpret their legal responsibilities and we hoped that they would interpret them flexibly. We were giving people licence to be flexible on all of those things.

Q94 Mr Lancaster: You must forgive me, but I do not understand how the implementation of that would lead to less flexibility. How can it be less flexible than it is now?
James Purnell: If a council writes to say they are worried about these six things and we pass a slip rule saying here are three things that they can be flexible about, the implication could be taken by legal departments that we are saying that they cannot be flexible about everything else.

Q95 Mr Lancaster: But they cannot be flexible.
James Purnell: A good example was the plans, where people asked whether they had flexibility to decide the kinds of plans which they were allowed to submit. We said yes, absolutely, they were. People, for example, are treating a local corner shop differently from a city centre nightclub and we would encourage that kind of thing. We felt it was much better to give people a general encouragement to be flexible than to specify the things on which they could be flexible, because the danger was, and we had to follow the advice that we were given, that in doing so people would take by implication that they could not be flexible on the other things about which they were concerned.

Q96 Mr Betts: Are you prepared to be very flexible where you are looking at the guidance and prepared to make some really quite fundamental changes. One of the pieces of evidence we had verbally a few minutes ago from the Institute of Licensing was that it was not just the odd issue that was the problem with the regulations; it was the whole way in which they were written. They were written on the presumption that here are the rules and this is what you will implement as a local authority. You do not really have the scope to go away and exercise common sense, because we are laying down how you will do it. That was the fundamental problem: the whole format in which the regulations are written despite the request not to do it like that when the initial consultation was done on the matter.
James Purnell: This is a point about the guidance which we issued to people.

Q97 Mr Betts: Yes.
James Purnell: We have to strike a balance. We have been criticised for not giving people enough guidance and leaving it all up to them.

Q98 Mr Betts: All the regulations; the regulations and the guidance.
James Purnell: We tried to strike a balance between giving people guidance and giving them enough clarity so you could then have consistency between different local authorities. That was something which was said very clearly to us by stakeholders when the Department was putting the Act and then the guidance and regulations together, versus other people saying they wanted flexibility. We had concern, when we were preparing that guidance, from magistrates and the police, from people in live music for example, that if we gave too much discretion to local authorities, that discretion might be something which would go against the things which those stakeholders were worried about. We disagreed with that; we did want to give people discretion, but we had to strike a balance between giving them clear guidance and allowing people to make decisions within that overall scope. We are happy to look at whether we got that balance right and we made it quite clear that we think the emphasis should be for councils to be able to take decisions on licensing based on their local circumstances.

Q99 Sir Paul Beresford: One of the witnesses mentioned that one set of guidance notes was 200 pages long. If that is correct, did you read them before they went out?
James Purnell: I was not the Minister when they went out. To be fair, it is worth remembering that we were bringing together six different regimes which had incredibly detailed rules in each of them and we were asked by the industry in particular to preserve what are called their grandfather rights. They had all sorts of conditions which they had obtained under previous regimes which they wanted to carry over. It would have been much simpler to say they could not do any of that and then we would have had a much thinner guidance document, but in responding to their concern to have the ability to preserve their grandfather rights, we therefore had to invent a system which was flexible enough to reflect all of those previous conditions and it therefore ended up being a longer form and a longer set of guidance notes because it had to cope with everything from a public entertainment licence for a village hall to selling by an online wine retailer. You can imagine that it had to be fairly comprehensive in scope to cope with all those 194,000 different licences.

Q100 Sir Paul Beresford: It is very helpful for a minister to sit on the other side of the fence and see it from the point of view of the village hall licensee and so and so forth, which I hope you are doing now.
James Purnell: We liaise, as I have explained in detail, with all of those bodies, with ACRE with the sports clubs, with the Federation of Small Businesses, to make sure that their concerns are taken into consideration.

Q101 Dr Pugh: May I go back to flexibility? You were asked specifically about the period between the application going in and the application being heard, a longer period of mediation. If that is in the guidance, I should have thought that was not

something any local authority would consider they had any flexibility to vary at all. Are you saying now that if they alter the dates, they extend the timescales to allow for mediation, that is permissible in your understanding of the law?
James Purnell: No, they cannot alter the timescales unilaterally. What I am saying is that we are happy to look at the timescales.

Q102 Dr Pugh: So there is no flexibility on timescales.
James Purnell: No, not on the timescales.

Q103 Dr Pugh: Can you explain why you are not flexible about acrobats, but you are quite flexible about clowns?
James Purnell: Who said that?

Q104 Dr Pugh: The rules on circuses. I do not want to set you off on circuses but you did explain that one of the anomalies in the rules for circuses is that definite regulations are laid down which require that if you have an acrobat you require some sort of licence; it is not apparent if you just have clowns that you do.
Mr Roberts: The Act does not define clowns or acrobats or circuses for that matter, it defines activity. Again it is for interpretation. I understand some authorities interpret things differently, but an acrobat is a display of physical skill so therefore counts as an indoor sport and that is entertainment. A clown could be defined as playing a role, in which case it might be licensable, it might not be. There is nothing in the Act which talks about clowns.

Q105 Dr Pugh: It is only inflexible on clowns really, but quite flexible on acrobats.
Mr Roberts: It is not for us.
James Purnell: Nothing changed there. It is worth clarifying that that was carrying over the rules from the previous licensing regime into the current one; there is nothing new there.

Q106 Chair: So there was already a disparity between acrobats and clowns.
James Purnell: There was.

Q107 Chair: Which you did not rectify.
James Purnell: There were different regimes for different types of activity which, when the Act went through Parliament, it was not thought needed rectifying.

Q108 Martin Horwood: I just want to come back to the answer you gave me earlier about applications which were out of time being deemed to be approved. In their memorandum to us Westminster City Council said, and I think they are talking about exactly the same thing though I am not certain "Westminster was not able to determine all the applications for variation it received. Approximately 140 could not be determined within the period of two months allowed by the Act and accordingly were deemed to be refused. The volume of applications was such that it was necessary to devise a system of prioritising applications to be dealt with". Were they wrong?
James Purnell: My point was about conversions. As you know, there are two different things one can apply for under the Act: one can apply for conversion of the existing rights or one can apply for a variation. Typically, what people who applied for a variation would have done was to apply for both. If I apply for a conversion and that is not granted within two months—the point I was making earlier—that is deemed to have been automatically granted and that premise will be able to continue functioning. If they have also applied for a variation, as would be the case in your example, and that is not processed within two months, the Act then deems that has not been granted and they can then appeal to magistrates. We did work with the Magistrates' Association and with the Justices' Clerks Society to put in place arrangements for that to be done as quickly as possible where the application to vary had not attracted any objections. Where it had attracted objections, it would be dealt with through the magistrates. What it is worth noting about that is that the Act put in place contingency mechanisms both for conversions and for variations but decided that conversions, because they were already permitted under the old Act, should be deemed to have been granted, whereas for the variation, because that might be more controversial, there should be a contingency plan whereby it went to the magistrates.

Q109 Anne Main: You did mention flexibility. Would you be prepared to be flexible over zones? The Government have put emphasis on communities and lively town centres and there has been a lot of concern about the fact that it seems to be the larger premises, to which you referred, the great big vertical drinking culture, which are starting to take over the town centres. Town centres still have a lot of people living in them who are very, very concerned that the effect of this Act will be to close down the small businesses selling alcohol, the smaller pubs which do not go to the longer hours and leave us with the big vertical drinking place to which you have just referred going until two or three in the morning.
James Purnell: I think the opposite is the case. The current law effectively has a loophole which allows vertical drinking establishments to keep on trading after 11 o'clock because they uniquely are the places which can do so because they put on dancing and music as well. If I wanted to open the kind of smaller establishment which you are concerned about, I cannot open after 11 o'clock unless I am a members' club. This actually levels up the playing field and allows those decisions to be made locally by local councils based on this strategy that they have for developing the town centre.

Q110 Anne Main: But you would not allow, for example, looking at cumulative impact or zones? Some town centres are very, very lively and this is what is worrying communities. How do we make

sure that we have a town centre which not only encourages drinking but encourages tourism and a holistic approach to people living there? They fear that under the Act as it stands, unless you have a degree more flexibility about cumulative impact especially and zones and so on, you will get the reverse of what you want, which is a sustainable community within a town centre.
James Purnell: That is exactly what the Act does. Previously councils had very little ability to refuse a licence, they were unable to say the area was already saturated and they wanted to have the ability to have a presumption that they will refuse licences. The Act, for the first time, allows people to do that. I was in South Hams recently, for example, and in Torquay they had brought in exactly that kind of cumulative impact zone which allows them to limit the number of premises which open and they have conditions which they are applying.

Q111 Anne Main: How does that work? You are talking about flexibility but the guidance which has come out is quite confusing. How can that work when the presumption is in favour of granting licences? How can it work then that you can start saying you will not grant any more because of the cumulative impact? I am confused and a lot of local councils to which I have spoken, my own included, are very confused about the guidance. They believe they have to push ahead with granting licences because that is the presumption of the government, yet they are very worried about the city centres being taken over by so many licensed premises.
James Purnell: That is why the Act creates this cumulative impact power where people believe they already have saturation to be able to have a presumption that they will not grant extra licences. That is exactly what Torquay have done and before this Act they could not do that. Secondly, the Act allows people to target the hours of premises on an individual basis. If they are worried about the behaviour of a particular pub, they can ask for a review of it any time they want to. Residents can ask for a review at any time they want to and those powers will be exercised by local councillors who are the people accountable to their electorate for the health of their town centres. Overall it is a much more effective system than the one which existed before.

Q112 Anne Main: Are you content that people can prove which particular pub is causing a problem? A lot of people are saying that it is very, very difficult, the onus being on the residents, to try to prove where the harm is coming from. When people are in a city centre at night you never quite know where they have come from. The guidance is to local authorities and they are very concerned about how they may put in what you obviously see would be positive effects and they want those positive effects but do not see how to deliver them.
James Purnell: The problem of proof occurred under the previous regime where people had to go to a magistrates' court and fulfil the standard of proof required by a magistrates' court. Under the new Act they will be going to the licensing committee and it will be for the licensing committee to take a view. They do not have to decide it on that basis of legal proof, they will be able to do so on what is effectively a lower burden.

Q113 Chair: Which of your two departments is going to take the responsibility of making sure that local government understands what its powers are under the Act to achieve all the things we have just been talking about?
James Purnell: We are doing that together.

Q114 Chair: Which of you would take the lead? Which one can be blamed if it does not work or be given the credit if it goes well?
Mr Woolas: We will take the credit. The answer to that question should be seen in the context of the Act. This is a devolutionary Act as part of a wider policy to give local authorities and local community representatives more powers to intervene, particularly in town centres but also in rural centres. It is inevitable that if you have a devolutionary policy, you will have different reactions. Obviously Westminster, from whom you have heard, is going to be different from a rural area in some of the counties. I believe, and the evidence we have rather backs this up, that because greater powers are going to local authorities and community representatives within local authorities the situation will improve significantly and that it is the status quo which is the problem and not the new Act.

Q115 Anne Main: What evidence was that? I have read a significant tome, the *International Journal of Drug Policy* and that looks at quite a few places where they have deregulated in the way you are describing and they did not see the delivery of the good things you hope to happen. I am hoping that we have learned from looking at that and you feel you have the measures put in place to make sure we do not have the same problems which they experienced such as nightlife stretching into the morning and causing problems with street cleaning, increased drug use and so on and not a decrease in drinking which is what you hope to happen.
Mr Woolas: The intention of the Licensing Act was not just to address the issue of licensing and alcohol: it is one measure to allow particularly towns and cities in this regard to have policies and strategies which can be shared, sometimes with town centre partnerships, sometimes with local authority partnerships, to address a number of issues, the creation of leisure and family economies, the creation of a wider range of leisure activities, the ability to clamp down on social disorder, the ability, for example, to mix and match with taxi and hackney carriage regimes. What we are trying to do as a government is to give powers to local areas through local authorities so that they can address problems, particularly in town and city centres, in more of a joined-up way. From the ODPM perspective and from the local government perspective that is the right way to go and we should never forget the fact that both the LGA and the

police representatives supported this Act and support its implementation. I am not denying of course that there are differences in different parts of the country, but that is inevitable if you have a devolutionary policy. The alternative is to have a heavily centralised policy.

Q116 Dr Pugh: How would you respond then to comments made before this Committee a few minutes ago by the Institute of Licensing who said that under the Act as it stands there are not enough strategic powers for the local authority to engage in a mediated discussion with licensees and so on?
Mr Woolas: Enough strategic powers for the local authority?

Q117 Dr Pugh: Yes.
Mr Woolas: I would react to that by saying that if local authorities and the Local Government Association want to bring those requests to the table, we shall be more than happy to look at them. It is very important that the local town centre partnerships and local authority partnerships work. It is in that way that we will be able, I believe, to see the significant cost savings to local authorities and others as a result of this regime as crime is tackled and town centres are handled in a more effective manner.

Q118 Mr Betts: May I pursue some points about local authorities? Clearly you are going to have a review of the fee structure. Will that also include the extent to which the costs incurred by local authorities really are being covered by the fees in totality? We are being told that there are lots of indirect as well as direct costs, costs of enforcement as well as simply processing the applications. The LJS certainly believe that in total local government is out of pocket by about £30 million. Are you prepared to look at that totality as well as the individual fee structure problems?
James Purnell: Absolutely and that is indeed the core reason why we set up the review by Sir Les Elton, that is why we changed the fees originally to address the concerns of local government and we made a very clear commitment that the regime would be self-financing so the fees would be set at a level which would cover the cost of administering and enforcing the system. We look forward to Sir Les Elton's recommendations on that and we would encourage the LGA to put forward as much evidence as possible of the costs of the requirements which the Act is putting on them.
Mr Woolas: As you know, we operate the new burdens policy across government policy to endeavour to ensure that new regimes do not have an extra burden on local government which is unfunded. The policy in regard to this, as you know and I state it for the record, is that the scheme should be self-funding. An important point is that the evidence from the Local Government Association is looking at the start-up costs as well as the ongoing regime. It is also fair to say that in that examination ODPM would want to look at the potential savings as a result of the scheme, given the extra levers which local authorities have to influence town centre behaviour and town centre economies. You might call it an old burdens rule, but it is an entirely fair point.
Mr Betts: In my experience of talking to local councillors two issues have come up in terms of the practicalities of operating. I have one local councillor who is a member of the licensing committee in Sheffield and just relating the workload they have had to the very limited number of people on the committee. Why do we need to restrict the numbers? I know we need to have people properly trained and have an expertise when they come to determine licence applications, but there are lots of other committees such as planning committees which we do not restrict in that way. Secondly, another local councillor turned up to make representations on behalf of his ward electors but could not speak because he was the local councillor and therefore was not allowed to make representations. Why are we so restrictive on that?
Chair: Can we just tack on two questions so you can answer them all at once?
Alison Seabeck: We heard evidence on that very issue about whether or not there should be continuity for councillors in terms of their representation on quasi-judicial bodies. Can you respond to that in the light of the fact that neither councillors nor MPs can make representations?

Q119 Chair: I think that is a question for Mr Woolas, which is about the various different quasi-judicial panels which local authorities run: planning, hackney carriage licensing and this. Given that they are all three quasi judicial, it would be helpful if what was expected of councillors in the way they behave was the same on all three.
James Purnell: In terms of limits, the reason for originally having a limit was that previously public entertainment licensing was done by very large committees and that had caused practical problems of getting people together and the level of training that people had had. It was therefore thought better to have a limit of 10 to 15, which would mean they would all be properly trained and it would be easy to get committees from that. In retrospect it may be that limit was unnecessary. What some local authorities, though not all, have done is to train up a wider pool and then substitute licensing committee members in when people are not available, when they go on holiday. As Audrey Lewis was saying to you earlier, that is now less of an issue going forward because that limit was only really a very practical issue during this high peak of work over the summer. I should just like to reiterate that we completely recognise that it has been a significant amount of work and we are very, very grateful to the officers and the councillors who have undertaken it. In terms of right to speak, councillors do have a right to speak as long as they are making representations on behalf of their constituents. We are happy to look at the issue of whether councillors and MPs should have a right to make representations on their own behalf without having representations from constituents.

Q120 Mr Betts: If councillors actually live in their own ward and therefore they are a resident who could be affected—
James Purnell: Then they can.
Mr Woolas: As a member of the committee?

Q121 Mr Betts: No; not on the committee.
James Purnell: If they live within the vicinity, then they can make a representation as a resident. If they do not qualify as being within the vicinity, they can make a representation if they have representations from constituents and there is nothing to stop them going out and getting those representations.
Mr Betts: That is not how it is being interpreted.

Q122 Chair: We might need to clarify this with your Department in writing afterwards. There is a certain degree of disagreement amongst us. It might be better, rather than ploughing on, to sort it out in writing subsequently.

Mr Woolas: May I add two other points? In addition to the question which has been raised, there is also of course the consideration of the code of conduct of the standards board and the findings of the Graham review of standards in public life. Key amongst our considerations in the response is the evidence from this Committee. There are issues around what is called the double-hatted issue where restrictions are placed on councillors and perhaps have a perverse, unintended consequence. I would want to look at the issue which has been raised in the round to ensure that there are not further unintended consequences and that is a very important piece of work. We would want to look at the evidence you present in your findings on this particular issue.
Chair: May I thank you both very much? We shall certainly be making recommendations and we are relieved to hear that you are both going to consider them and that we may actually be able to work with you to improve the system the next time round. Thank you very much.

Written evidence

Memorandum from the Federation of Small Businesses (FSB) (RL 01)

1. Executive Summary

1.1 The Federation of Small Businesses (FSB) research demonstrates that the Licensing Act (2003) is fundamentally flawed with regards to small businesses. The problems are principally associated with fees, bureaucracy, and disparity in the actions of the implementing local authorities. A lack of adequate consultation may also have contributed to the difficulties with the new regime. All SMEs will have experienced a price increase of 100% in the cost of their licence. Some SMEs have experienced a fee increase of nearly 400%.

2. Introduction

2.1 The FSB is the United Kingdom's (UK) leading non-party political lobbying group for small businesses. The FSB exists to promote and protect the interests of all who own and/or manage their own businesses. With over 190,000 members, the FSB is the largest organisation representing small and medium-sized businesses in the UK. We welcome the opportunity to contribute written evidence to the Committee's inquiry into re-licensing.

2.2 Of its 190,000 members, the FSB is aware of approximately 20,000 members who are affected directly or indirectly by the Licensing Act (2003) because of the nature of their businesses. Approximately 10,000 of our members run licensed premises or trade within the entertainment industry, of which 5,500 are publicans. Our membership therefore constitutes at least 17% of the 60,000 businesses that were required to convert their licence before 6 August 2005, or be subject to applying for completely new one.

2.3 The FSB has four main areas of concern with the new regime:

- The lack of a balanced dialogue with small businesses about the new regime.
- The level of bureaucracy of the new regime.
- The disparity of implementation between local authorities.
- The fees level.

3. Initial Thoughts and Views About the System

3.1 The principle behind condensing legislation into one primary legislative Act is, of course, to simplify and consolidate the Law. The standardisation of regulation may seem like an attractive proposal therefore and the FSB has been broadly supportive of that principled approach. However, it is the implementation of the Licensing Act (2003) where problems have arisen. The new licensing regime has adversely affected small businesses. With regard to the fees system in particular, we consider that the new regime was not properly thought-out and was implemented with some haste.

3.2 The dialogue with small business associations, sports clubs representatives and other bodies representing businesses adversely affected by the new regime was lacking until it was too late to make amendments to the new regime. In any event, small business associations, such as the FSB, had to approach the DCMS themselves to start up a dialogue.

3.3 The FSB's initial consultation response to the Department for Culture, Media and Sport (DCMS) about the draft regulations and Order to be made under the Licensing Act (2003) stated that "a more business-friendly approach to the implementation of the regulations" would be desirable and that "the FSB acknowledges the need for creating a uniform format, but suggests that the transitional period is unnecessary and bureaucratic. These licences should be updated to the new format as and when they expire." Unfortunately, the policy of introducing the new licensing system as and when licenses expired, was not adopted by the DCMS. It appears that the new regime was driven through by central Government, without adequate thought as to the requirements of local Government.

4. The Level of Bureaucracy of the New Regime

4.1 The FSB has conducted a considerable amount of research since February 2005. The members that it has come into contact with on the issue of the new regime have predominantly been members who already had a liquor licence and needed to convert it by 6 August rather than apply for a new licence by 24 November. This marries well with the nature of this inquiry.

4.2 The most oft-cited problem with regards to bureaucracy has been the length of the licence application forms. The form to apply and/or convert the alcohol licence is 21 pages long. If converting a licence, only seven pages of the form are actually relevant. However, the form still needs to be read and analysed before

it can be completed. The length and complexity of the form is a barrier that SMEs face in comparison to a large corporation with a legal department to fill their forms in for them. FSB research has shown that SMEs spend five times more hours per employee than large firms on regulation.[1]

4.3 In addition to the length of the forms and the difficulties that SMEs have had completing them, is the issue of floor plans, sound-proofing and other measures that some businesses have been required to introduce if they wished to vary their licences. This is an additional expense that has not been well-publicised. The costs for small businesses requiring a licence to sell alcohol has increased sharply and architects' plans and the cost of sound-proofing premises further compound this. One member stated that whole process would cost him "in excess of £4,000." This is a clear demonstration of a system that has not been properly thought through and has not taken account of small business needs.

4.4 In the words of another member: "I am working from my home with only a computer. I will not be selling directly to the public from my house or storing any significant amount of alcohol at my house. Unfortunately the new rules do not distinguish this type of business and I have to perform seemingly absurd actions like:

— Submitting a scale plan of my house; why? I'm not changing anything merely working from my bedroom. I will have to pay a surveyor to do this.

— Posting a "Pale blue" notice outside my house telling people what I'm doing; why? this will only attract the attention on undesirables who will think I have lots of whisky in my house!!! Do you know how hard it is to get a small amount of pale blue paper? It's not something I'll ever use again.

— Posting an ad in the paper telling people what I'm doing and my address!"

5. The Disparity of Implementation Between Local Authorities

5.1 There are over 400 local authorities who have been tasked with implementing the new Act. The FSB believes that some difficulties have arisen because of differences in implementation.

5.2 Leading up to the 6 August deadline, the FSB's research showed that generally, local authorities with good guidance and clearly accessible information on their website had had a better response rate than those that did not offer good guidance and in some cases, no guidance at all. Local authorities who were particularly committed to ensuring the Act was implemented in the spirit within which it was intended are: Kingston; Swindon; Epsom and Ewell. The week before 6 August, Kingston had received 50% of possible applications to convert; Swindon had received 60% and Epsom and Ewell had received 66%. The figure of 66% was one of the highest. The council with the highest receipt of applications the week before the deadline was South Hams in Devon, receiving 77% of all applications. Croydon council, which had no specific guidance on its website, received just 30% of possible applications to convert in the week before the 6 August deadline.

5.3 The Licensing Officers have also conducted business differently. This may be a matter of subjectivity, but the FSB believes that the DCMS has not been the guiding department that it should have been. The FSB considers that local authorities (and have spoken to Licensing Officers who have confirmed that this has been the case) have been left largely to their own devices, because of the diversity of local authorities in England and Wales, and their different requirements. The FSB has heard from several members with problems to this effect:

> "I had all my documents with me. Everything was in order. The only thing that I did not do was get the back of my passport photos signed by someone known to me who would state that it was a correct likeness. This was the second time that I had brought in a form to the council. The first one got 'mislaid'".
>
> "However, those of our guests that do like a glass of wine with their evening meal may very well choose to stay somewhere else. Thus we lose, not just a few pounds in drinks sales, but also the income from meals and bed and breakfast. I have also heard that we cannot get round this problem by allowing guests to bring in their own drinks, as West Norfolk is interpreting the regulations in such a way that we would need to be licensed even for this."

5.4 Where the FSB has some sympathy for local authorities is where they have had to institute new ways of working and, in some cases, new departments. New staff have been recruited and new databases set up. Most local authorities are still over-burdened with the level of applications from 6 August. Many local authorities have called for the 24 November deadline applications to be in by the last week of September to ensure adequate time for processing the forms. If the FSB's suggestion of renewing licences as and when they expired had been adopted, Licensing Departments would not have been overwhelmed in the run up to 6 August or suffering a backlog now. A slower introduction would also have enabled their processes to be instituted properly before being overwhelmed by the volume of applications received in a matter of days before the 6 August.

[1] Professor Robert Baldwin, Better Regulation—Is it better for business?, an FSB publication, September 2004.

5.5 The large increase in applications to convert licences in the last week may have also arisen because of the system itself. If you applied for a licence on 7 February 2005 and received it within one month, it is valid from the date received and then has to be renewed exactly a year after that date, not on 6 August. This is not a problem for a large pub company with funds readily available, but it is for a smaller concern. An SME with a functional licence is more likely to operate under that licence for a further six months than to apply to convert their licence as soon as they were able to. This is because of the cost implication involved.

6. The Fees Level

6.1 As noted in the introduction, the FSB considers that the Licensing Act (2003) was implemented with considerable haste and was not properly thought through. The FSB feels that this is the case with particular regard to the fees system.

6.2 The system is supposed to be self-funding. That the fees must therefore be calculated as fairly as possible makes sense. Aligning the fees system to the current business rates regime may be considered to be sensible, but the business rates system is not flawless. The current business rates system it is not related to the ability to pay1 the only major (business) tax so constructed. In addition, business rates are proportionally a greater burden on small firms than large ones (often the third largest expenditure after salaries/wages and rent payment) and the system of local government finance itself is also under review.

6.3 The flaws mentioned above have been replicated under the new licensing fees schedule because it is a blanket application. It has not fully considered the impact on businesses with a very low rateable value or businesses that do not make the bulk of their profit from alcohol sales, and this has impacted negatively on FSB members and others.

6.4 Some SMEs (in particular those with a low rateable value who do not make the bulk of their profits from alcohol sales) have suffered an increase in fees of over 300%. This is unacceptable. Every SME in the first bracket of rateable value will have experienced an increase in alcohol fees of over 100%. At the other end of the scale, costs for larger, more profitable chain pubs and nightclubs have been considerably reduced under the new system. The present fees structure demonstrates a disproportionate cost levied against SMEs.

6.5 The FSB should like to see a genuine sliding scale for licensing fees. As noted above, the first bracket of rateable value runs from £4,000 to £33,000. The difference between the two values is large. To charge the same price for one business with a rateable value of £4,000 and another with a rateable value of £33,000 is not properly representative or cost-reflective. To put this into context, firms with 1–2 employees spend 4% of annual turnover on compliance and businesses with under 20 employees experience compliance costs that are 35% higher than firms with over 50 staff.[2]

6.6 The FSB welcomes the fact that there is a Small Business Rate Relief scheme in England, but unfortunately it does not apply to Wales (Scotland and Northern Ireland have slightly different systems). The relief scheme applies to businesses with a rateable value of up to £15,000 (£21,000 in the London area) but a similar policy has not been applied to the licensing regime.

6.7 Our long established policy on business rates is to extend the banding levels of the current scheme for solely occupied properties up to £25,000 rateable values and thence to £50,000 rateable values.[3]

6.8 The new fees system has resulted in some SMEs selling alcohol at a loss. One member used to make £89 profit a year from selling alcohol at her guest house. Under the new system, she sells alcohol at a loss because her customers expect the service of a small bar. Another member runs a florist shop. Under the new system, he has to double the amount of champagne he sells to make a profit. Many other SMEs are in the same position.

6.9 Please see below for some quotes from FSB members:

> "the cost in the future for my new combined licence will be 146% higher, that is nearly $2\frac{1}{2}$ times what I am currently paying".
>
> "there is also a requirement to submit plans at 1:100 scale (rather than simply using existing liquor licensing plans lodged with the licensing justices) with applications to convert to the new system which also adds hassle and some hundreds of pounds of additional cost".
>
> "The cost hitherto for this licence through the old Magistrate Court administered system was £30 for a three year period. Now I am faced with the requirement to hold a Personal Licence at a cost of £35 for 10 years and a Premises Licence cost in the first year of £190 and then renewable at £180. The other potential costs involve the need to provide scaled drawings of the premises which for some business may involve considerable extra architects cost and possibly legal costs in the completion of the licence application forms."

[2] *Ibid.*

[3] *Business Rates: the small business perspective*, FSB April 2005, p 4.

7. Conclusion

7.1 The Licensing Act (2003) seemed to be a good idea in theory. It should have opened up the night-time economy and allowed for greater flexibility in the business of licensed premises. What it has achieved for SMEs thus far, is a huge increased cost burden and confusion, especially for licensed premises such a florists, that do not make the bulk of their profit from alcohol sales; a burdensome form-filling exercise that takes time and effort. The FSB is aware that some of its members may not renew their licences and already two members are closing down their businesses because of the cost of implementing the new regime. These members are the ones that we are aware of, but there may be many other small businesses in the same position. This is the undesired effect of the new regime and one which has affected a considerable amount of businesses and will continue to do so if the status quo remains.

Memorandum from the Cinema Exhibitors' Association (CEA) (RL 02)

1. The CEA is the trade association for UK cinema operators. It represents over 90% of cinema operators in the UK measured by companies or market share. Within the membership are multi-national operators, UK circuits, owner/managed sites, locally subsidised cinemas and art houses. It is a very wide membership base. There are approximately 640 full time cinema sites in the UK the greater majority being in England and Wales all of which were required because of the Licensing Act 2003 to convert their cinema licence issued under the Cinemas Act 1985 into a Premises Licence. The definition of an "exhibition of a film" which is one of the categories for regulated entertainment means any exhibition of moving pictures therefore the premises where film exhibition as a regulated entertainment requiring licensing under the 2003 Act is much wider than the general perception of a cinema.

2. CEA participated fully in the DCMS's advisory group and the four sub-groups that were subsequently created during the Bills preparation and passage through parliament. It is strongly believed that participation in the working group provided the opportunity to identify potential administrative areas where clarity of the Government's policy intentions required further work in either the drafting of the Bill, Statutory Instruments or Guidance. The retail of alcohol and the potential consequences of this retail activity was the dominant factor from the original White Paper, the drafting of the Bill and Guidance. The working groups were able to identify unforeseen administrative consequences for other licensable activities if some rules imposed for the control of the retail of alcohol were to be imposed on all licensable activities. The advisory/working groups and the CEA's opinion undoubtedly assisted Government in achieving its policy objectives whilst avoiding unforeseen consequences of applying rules to all licensable activities where they were inappropriate.

3. Legislation, which has been in place for some time, builds up a reservoir of knowledge of its application, operation and for licensing matters, how the appropriate licensing forms are to be built in by the applicant. The form for the Licence to claim Grandfather Rights and seek variations during the transition period was new for all, both the applicant and local licensing authority. The process of application was designed to enable the licensing authority to judge the merits of the four licensing principles. The emphasis in achieving the four licensing principles was a new "concept" moving away from the prescriptive licensing regimes of the past. The necessity to re-educate the licence applicant in the new concept of risk assessment and the objectives of the Licensing Act 2003 was paramount. In March 2005, for the completion of the form and to seek variations, CEA produced guidance. It was necessary to link the new Act with concepts from previous legislation and to encourage the understanding of the underlying principles of the new legislation. CEA issued regular updates. This was necessary though it would have been advantageous to CEA members and I am sure the enforcing authorities if procedures and especially the fee levels, had been settled prior to the First Appointed Day, in February. The guidance, if policy were to have been settled, would have been issued earlier.

CEA conducted 23 days of Workshops throughout England and Wales to brief members on the impact of the Licensing Act 2003 and how completion of the form should be tackled taking into account their own individual circumstances. The Workshops were popular with the smaller operators—larger operators' solicitors were contacted and one-to-one discussions on the approach to completion of the forms took place. The pooling of information was advantageous to members as a consistency of approach to completion of the application form was developed. The points of potential contention identified were discussed with LACORS who also had sight and an opportunity to comment on the draft guidance. The guidance issued by DCMS was naturally geared towards the main market that the Licensing Act 2003 was initially drafted for namely alcohol sales. The regular newsletters issued by DCMS "Count Down", were also initially geared to the main market. A great deal of effort was put in to try to alert those businesses that probably had little contact with mainstream organisations, local councils or Government. For film exhibition though we are in contact with over 90% of regular cinemas we arranged for occasional bookers of cinematographic film to be contacted directly if a film had been booked over the last two years and arranged with distributors to put warning notices in film print cans about the imminent approach of 6 August in deliveries in July. Similar innovative methods were used by DCMS.

Generally I believe that Government, local licensing authorities and trade associations made every effort to inform potential licensees of the imminent approach of the First Appointed Day, 6 August, and Second Appointed Day—24 November. One can always say that one could have done better but on balance I believe

a reasonable job was done. The major reason that a reasonable outcome was achieved was because of the working groups that sat during the preparation and passage of the Bill that achieved a well-educated body of people who were able to disseminate the critical information to greater numbers.

4. One area where I believe that the educational process fell short was in the area of informing local licensing authorities prior to the production of their draft licensing policy documents. These documents were being produced during the passage of the Bill and in some cases the documents presumed too much and went beyond the authority granted by the Act. This caused those commenting on the documents substantial expenditure of time which could probably have been better spent preparing potential licensees for the transitional period. A major lesson that we can learn is that when there are tight deadlines the underlying legislation must be settled before preparatory work is undertaken.

5. Generally speaking, as far as cinemas are concerned, the transitional period has gone well. CEA is aware of very few cases where anything has gone dreadfully wrong. There have of course, as with all new legislation, been discussions between the potential licensee and the local licensing authority but generally these conversations have been brought to a satisfactory conclusion for both parties. Some authorities appear to have been over zealous where variations have been sought anticipating the review procedures laid down in the Act which we think is a pity. We strongly believe that unless strong representations were made that variations sought should have been granted in full and the review procedures issued. If any of the licensing objectives were subsequently breached the representative bodies have the right to request a review.

6. The conversion of the numerous licences into one Premises Licence was a huge task. It has demanded commitment from many people and organisations. Certain bodies have used the exercise as an excuse to pursue particular hobbyhorses. On balance the exercise has been a reasonable success.

Memorandum from the Network of Residents' Associations (RL 03)

Preamble

We report on the implementation of the Licensing Act 2003 as experienced by residents all over England, who are members of this organisation. There are members from large cities such as Norwich, market towns such as Shrewsbury and from small towns and villages in various parts of the country. The experience is varied, presumably a consequence of devolving the detailed policy of implementation to each of the separate Licensing Authorities with no central control apart from the Guidance document to limit the interpretation of the Act itself. Some like Norwich report an excellent service with few problems but the majority are highly critical of the manner in which the Act is being implemented.

Experience

The variations derive from several factors.

Licensing Policy—cumulative impact

1. In cities with a dense collection of licensed premises, it has proved possible to include in the local Licensing Policy a strongly worded policy on "cumulative impact" related to certain areas. This has allowed Licensing Authorities to respond to representations with firm policies so that adequate restrictions to protect the environment can be imposed. It was much easier to refuse extensions of hours and impose noise controls on premises in areas of "cumulative impact".

1.1 Where local Licensing Policies have no such "cumulative impact" policy, it has proved much more difficult for objectors to succeed in restricting hours of closure. The main concern of residents has always been street noise, nuisance and anti-social behaviour, "adverse events" not covered by any legislation. The failure to limit the closing times of numerous licensed premises to the evening rather than the early hours of the morning has been a serious consequence of this Act, so that this main concern is expected to spread into the night and early hours.

Evidence

2. In spite of the several statements made by the Secretary of State, that the Act and the Guidance would increase the influence and power that residents and their associations would have over decisions on licensing, it is clear that the opposite is true. The Act and the Guidance severely restrict the ability of residents affected by licensed premises to object to premises licences. There are three issues.

2.1 The Act prescribes that residents wishing to object to an application for a premises licence must reside in the "vicinity" of the premises for which the premises licence is sought. The term "vicinity" is not defined in the legislation. A few Licensing Authorities have decided that a finite distance such as 100 metres describes the "vicinity", but the majority leave it to each Licensing Sub-committee to treat each case on its merits. This frequently excludes residents with a legitimate concern that would have been accepted in Licensing Magistrates Courts, before the system of granting licences was transferred to local authorities. This freedom

granted to individual Licensing Authorities and then to the several Licensing Sub-committees of each Licensing Authority has led to a variable standard of determinations not only occurring in different Licensing Authorities but also within each Licensing Authority.

2.2 A second significant restriction in the Act states that objections must refer to a single licensed premises. This is not infrequently an impossibility when there are several licensed premises near one another. Attributing a problem to one rather than another licensed premises in a group of premises cannot be proven by a resident or a residents' association.

2.3 A third problem is prediction. If legally acceptable proof of a problem is required, how can an objector prove that extending the opening hours of a licensed premises will lead to "public nuisance"? It can only be proved having allowed it to happen and then report it. Although the third "licensing objective" is "the prevention of public nuisance", many Licensing Sub-committees will not accept the prediction of "public nuisance" that has not yet happened as a valid reason for objection.

2.4 Consequently many Licensing Authorities have granted extension of licensing hours into the early hours of the morning in spite of strong objections by residents even when their properties have been contiguous with the relevant licensed premises.

Temporary Activities

3. There is a concern regarding the section of the Act dealing with Temporary Activities and Temporary Event Notices, which deal with events that take place on unlicensed premises or outside permitted hours on licensed premises. These events comprise farmers' markets, church fetes as well as events that can last continuously for 96 hours for up to 499 people. The legislation restricts control of these events to the police, who can only object on the grounds of only one of the four licensing objectives, that is the "prevention of crime and disorder". Residents likely to be affected by events that continue after 11 pm have no right to express their concerns. This matter is currently under consultation with the DCMS and we await its conclusions. We have suggested that a wider exposure to objections should be available for events that continue after 11 pm.

Responsible Authorities and Liaison Groups

4. Although "responsible authorities" are listed to receive licensing applications, they are also restricted in their ability to object in the same way as "interested parties" such as residents and resident associations.

4.1 The police approach is varied. In some areas the Police Licensing Officer appreciates the problems of residents and expresses appropriate concerns, but in others the involvement is limited strictly to "the prevention of crime and disorder" objective, so that "the prevention of public nuisance" is ignored. This appears less likely where there is close cooperation between the applicants, the licensing authority, the environmental health department and the planning authority, especially in those authorities which have formed a liaison working group as recommended in the Guidance. In many areas the police raise no objections to extended hours, presumably because they share the government's belief, that extended hours will lead to staggering (in time) of customers leaving licensed premises and this will reduce the need for policing. We do not share this belief. In these areas we also suspect the police authorities will be ill-prepared for the consequences of the extension of opening hours.

4.2 The involvement of planning authorities is also varied. Where an application for a premises licence includes a request that conflicts with a planning condition, the planning authority has an option to object. Some planners will not object unless the relevant condition can be specifically related to one of the four licensing objectives. Others will just mention it to the Licensing Authority with the expectation that this will be pointed out to the applicant. The Licensing Authority may then advise the applicant to apply to have the planning condition removed or modified or to modify the application, but, even if neither of these actions are taken, the Licensing Authority will grant the premises licence with the facility that is in breach of the planning condition.

Publicity

5. Some Licensing Authorities have first-class web sites on which all the data one could possibly want are readily accessible without having to visit the Licensing Authority offices, but this is rare indeed. At the other extreme there are some authorities, who have not even established an adequate Licensing Register. In some authorities it is difficult to discover the new applications without studying the whole register.

5.1 Some licensing authorities restrict access to the detailed files, so that, for example, negotiations between the applicant and the police are not available for scrutiny. The police will not provide details of "adverse events" in relation to particular premises, but only provide "beat data", which is inadequate as evidence as described in the section on Evidence (vide supra). Their reason for this limitation is given by reference to the Data Protection Act and to exemptions in the Freedom of Information Act. We consider this unreasonable and it has prejudiced objectors' ability to present adequate hard evidence to hearings and will continue this prejudice in the future to reviews.

Appeals

6. There is a suspicion that Licensing Sub-committees are advised by their relevant Legal Advisers not to refuse an application, because they do not want to risk an appeal. It is far more likely that a dissatisfied applicant will appeal against a determination than a dissatisfied objector, who is less likely to want to run the risk of having to pay costs.

6.1 There is also the problem, that in the event of an appeal by an applicant, the Act omits to specify an obligation to inform objectors of the fact. Nor does it specify that objectors should have an opportunity to be parties to the appeal. It means that the hard evidence presented by objectors at the licensing hearing is not necessarily heard in the Magistrates Court.

6.2 Another problem affects an objector, who is rejected by the Licensing Sub-committee because he/she is not in the "vicinity". The objector has no right of appeal to a Magistrates Court, because he/she has never been registered as an objector. Such an objector would have to seek Judicial Review and a High Court action in order to have the term "vicinity" defined. This abrogation by Parliament to the Courts to decide the meaning of "vicinity" at the not inconsiderable expense of an objector appears grossly unfair. An applicant would not be concerned with this definition and so would not need to incur this expense.

Suggestions for change

7. Many residents consider they have been disadvantaged by the new legislation. They consider the "playing field" is not level. Although the Act itself does not weigh the balance in favour of the applicant, it certainly appears to be the effect of several sections of the Guidance. In particular the quotes in Chapter 6 of the Guidance appear to be used to justify extended hours at the expense of residents quality of life. It is understood that the DCMS is intending to review the Guidance in 2006, but it is now too late since the vast majority of premises licences have been granted, and they have been granted in perpetuity. If there had been a "level playing field", we feel sure that many of the premises licences would have taken greater account of residents' objections.

7.1 The remedy available to resident objectors now lies in the possibility of seeking reviews of the licences. The Guidance will still restrict objectors because of the imbalance inherent in this document. The key features meriting modification are first the definition of "vicinity" and secondly the restriction on allocating "adverse events" to a single premises when there are several premises too near each other.

7.2 If the term "in the vicinity" were to be defined as "anywhere in the area where relevant problems could be attributed to the relevant premises", the exclusion of relevant residents from making representations might be resolved.

7.3 To resolve the difficulty of identifying particular premises with a particular problem really devolves onto the police. If the police were obliged to obtain the name of the last licensed premises visited by possible offenders in the street, and this information made available to objectors, then a possible solution is to hand. Unfortunately the police in some areas hide behind the Data Protection Act and use exemption clauses in the Freedom of Information Act to deny objectors vital information needed to support their case.

7.4 The fear of having to pay costs at an appeal deters most residents and their associations from taking their grievances to appeal. Currently there are no rules governing the awarding of costs for licensing appeals, unlike other appeals to magistrates' courts. If a fair system listing rules for awarding costs against litigants were designed, then perhaps this line of action for objectors might be less daunting than it is.

7.5 The formation of Liaison Committees should be mandatory and not just recommended. Not only should Council officers from the relevant departments—licensing, planning, legal and environmental health—meet regularly, say monthly, to discuss licensing applications and whether they conflict with relevant policies, but also a Liaison Committee should be formed from representatives of the relevant players—licensees, police, transport services, health authority, business community, parish council, residents associations. The latter could meet three or four times a year, so that problems can be discussed and resolved without recourse to hearings and reviews. Similar committees already exist in many planning departments to discuss planning issues, and this measure would surely be beneficial in the licensing field.

Memorandum from the Redland & Cotham Amenities Society (RL 04)

BACKGROUND AND EXPERIENCE

1.1 This Society represents some 1,400 residents of the Redland and Cotham areas of Bristol. These are typical established older city residential districts, and are located over a mile from the city centre. The main local shopping centre includes some 25 licensed pubs, bars and restaurants, with eight pubs elsewhere in the area. There are also many takeaways, off licences, etc.

1.2 We closely monitored the progress of the Licensing Act and responded fully and constructively to all consultations, and submitted evidence to a previous ODPM Select committee. We were and remain deeply critical of many aspects of the Act, Guidance and Regulations and welcome the chance to comment on the Transition Period. If not corrected the matters we complain about will continue to prevent fair implementation of the Act.

1.3 We have inspected all applications for Premises Licenses involving Variations in our area and have made representations on behalf of residents in respect of some 15, 12 of which have been determined following hearings. As a result of publicity by this Society individual residents—up to 40 in number—have also made written Representations.

1.4 We assume that the Select Committee seeks evidence of how well the required procedure has worked. In our view it has been cumbersome, needlessly bureaucratic and thus hard work for all parties. It is also unfair to residents. In our experience it is the system designed by DCMS that is at fault—not local implementation.

We have these specific comments and suggestions.

Public Notification and Participation

2.1 Many applications for Variation have not attracted a single Representation from residents. This is largely because the existing requirements for Public Notices by the Applicant and Local Authority are completely inadequate. We are finding that almost nobody has made representations as a result of either the newspaper advertisement or notice in premises window. This is because:

2.2 Press Advertisements. Very few people read the local paper let alone study the pages of small print official/public notices.

2.3 Premises Notices. These have to be searched for amongst advertising, etc on windows, entrance doors and even menu boxes. They are very easily missed. Where the windows are set back from the pavement, eg, because of a forecourt or garden, they are even less likely to be seen, and some people are reluctant to approach and study them.

Possible solutions:

2.4 The Regulations should be altered to require A3 size on a standard format headed ALTERATIONS TO LICENCE. Also all notices to be placed where they can be read from public highway.

2.5 Local Authority should be required to advertise licensing applications to at least the same extent as for planning. This would generally mean notices in on the nearest lamp post and letters to nearby occupiers. (additional cost to be borne by applicant.)

Notices

3.1 The wording of the Notices (in the paper and on premises) is often meaningless to the general public. (See Appendix examples A and B). As representatives of residents we find it impossible to understand what is proposed without visiting the Licensing Office, studying the application form and writing an interpretation. The most intelligible part of many notices is the threat of a £5,000 fine for giving false information.

3.2 The Act, Guidance and Regulations conflict in their description of what is required on Notices. For example, the Guidance requires an A3 Notice—but the Regulations say A4. The Guidance requires better information than the Regulation, which written subsequently. Nowhere is there a clear statement of what is required to be included.

Possible solutions:

3.3 Regulation should be altered to require a clear explanation of how the premises will affect the public, so must include all activities and their hours. It should not be necessary for us to produce an intelligible translation ofwhat is proposed to enable residentsto decide whether to object.

Time Limits

4.1 The rights of citizens have been seriously affected by the inadequate information described above and also by the unreasonable time limits imposed on LA during Transition. This has prevented the impact of applications being understood in time to make adequate representations. It has also forced LA into hasty decisions by overworked officers and Committees.

4.2 Representation period.

This would be adequate if the Notice requirements were tightened up and extended as suggested above.

4.3 Period for holding hearing.

This is inadequate. It makes inclusive discussions and negotiations that might avoid a hearing almost impossible. In no case have resident objectors been invited to participate in pre hearing discussions that may have been held with Police and Statutory Consultees. They are thus disadvantaged at Hearings.

4.4 Notice of Hearing.

The minimum required is 10 working days, with notification of attendance required 5 working days before hearing. This is completely inadequate. Because of this short period objectors may not even receive the Notice of Hearing in time to accept—they need only to be away for a week for this to happen. In any case, with all hearings taking place in the day many are unable to attend and certainly not at such short notice. The present time table denies residents their rights.

Possible solution:

This period should be increased to at least 15 working days. Where there is significant public objection the hearing should be in the evening. This happens with major planning applications, in Bristol at least.

ACCESS TO INFORMATION

5.1 There is wide variation in the amount and ease of access to application documentation, reflecting the will and capability of LAs to inform their citizens. Some are exemplary, with comprehensive web sites and full information supplied to those making representations. Others refuse to provide or even allow copies to be taken of the application.

5.2 It is unreasonable that applications can only be inspected at offices during weekday working hours.

5.3 We are not allowed to see representations by Interested Parties, though Applicants are supplied with copies. The Data Protection Act is quoted. This prejudices the ability of residents to present a coherent case at hearings.

Possible solution:

The Guidance/Regulation should require all councils to make all documentation relating to an application available to citizens.

APPENDIX SEE 3.1

Examples of Notices, almost impossible for residents to work out what is happening.

A. An additional hour every Thursday, Friday, Saturday and Sunday. A further additional hour into the morning following every Friday, Saturday, Sunday and Monday for each May Bank Holiday, Spring/Whitsun Bank Holiday and every August Bank Holiday Weekend. A further additional hour into the morning following every Thursday, Friday, Saturday, Sunday and Monday Morning for the Easter Bank Holiday Weekend. A further additional hour every Christmas Eve. A further additional hour every Boxing Day. To reflect existing New Years/Day hours. Drinking up time: an additional 10 minutes, to allow 30 minutes drinking up time, after the last permitted sale of alcohol. All of the above to be for the sale of alcohol, recorded music, karaoke and live music limited to two entertainers.

Comment—This notice assumes that the public know what existing licensed hours are, and they do not, partly because existing hours vary.

B. To allow accompanied children under 16 to be permitted in the bar in line with the provision of the Licensing Act 2003. To extend the hours for the sale and supply of alcohol and other licensable activities to Sunday (01.00 am), Monday (00.00 am) Tuesday (00.00 am), Wednesday (00.00 am), Thursday (01.00 am), Friday (01.00 am), Saturday (01.00 am). To remove the restrictions relating to drinking up time. To allow credit sales. Removal of certain existing conditions on the licence (s). Provision of late night refreshment to Sunday (02.00 am), Monday (01.00), Tuesday (01.00 am), Wednesday (01.00 am), Thursday (02.00 am), Friday (02.00 am), Saturday (02.00 am).

Comment—Study of application form shows additional hours at all four day public holidays plus "national days". Also live music and dancing. No information on which existing conditions to be removed.

Memorandum by LGS UK (RL 05)

We are chartered surveyors who act as agents for applicants under the Licensing Act 2003 and trainers for Licensing Authorities. We have experienced a broad range of interpretation by Licensing Authorities during the conversion period. So far we have three main areas of concern.

PUBLIC NOTICES

1. The law requires that variation applications should be advertised by window notice and public notice as follows:

— Prominently displaying an A4, pale blue notice which can be conveniently read from the exterior of the premises for a period of no less than 28 days from the day after the day of the application.

— By publishing a notice in a local newspaper within 10 working days from the day after the day of the application.

2. The content of a public notice is specified in The Licensing Act 2003 (Premises Licences & Club Premises Certificates) Regulations 2005. Reg 26 requires a "brief description" of the application in addition to the matters prescribed in (a) to (f) below:

(a) the name of the applicant (or club);

(b) the address of the premises;

(c) the address (including the worldwide web address) of the licensing authority;

(d) the date by which an interested party or responsible authority may make representations;

(e) that representations shall be made in writing; and

(f) that it is an offence knowingly or recklessly to make a false statement in connection with an application and the maximum fine for which a person is liable on summary conviction for the offence.

3. The notice must also state that "the application may be inspected at the Council office during normal working hours etc" and there is nothing in Reg 26 requires the listing of timings.

4. The Licensing Act 2003 S17(5)(a)(ii) requires the SoS to make regulations to advertise applications in a manner which is likely to "bring the application to the attention of the interested parties" etc and S8 requires the Licensing Authority to keep a public register containing the matters listed in Schedule 3 which includes the full details of an application, which interested parties may view.

5. The S182 Guidance, which pre dated the Regulations, does refer to hours however this same guidance also referred to an A3 sized notice. At the time of writing this guidance it was not envisaged that applicants would also be required to advertise their applications by way of public notice.

> *Advertising applications*
>
> 5.52 Regulations governing the advertising of applications for the grant or variation or review of premises licenses will be contained in secondary legislation made by the Secretary of State and can be viewed on the DCMS website. They include the requirement that a brief summary of the application setting out matters such as the proposed licensable activities and the proposed hours of opening should be clearly displayed on an A3 size notice immediately on or outside the premises for the period during which representations may be made, together with information about where the details of the application may be viewed. So far as possble, as well as putting in place arrangements for interested parties to view a record of the application in the licensing register as described in Schedule 3 to the 2003 Act, it is expected that licensing authorities will also include these details on their websites. Charges made for copies of the register should not exceed the cost of preparing such copies.

6. The more recent DCMS Guidance notes to applicants (June 2005) states:

> *Description of nature of proposed variation*
>
> *You should briefly describe what changes you wish to make to your licence. If this means changing the premises in any way, for example by changing the boundary or perimeter, you should give a full description of that change and include plans.*

7. A number of Councils insist on the inclusion of ALL opening, alcohol and regulated entertainment times in addition to the matters prescribed by Reg 26 in both the window notice and the press notice. The result is large expensive public notices which still do not provide the complete picture.

8. The Oxford English Dictionary defines brief as "concise; using few words" and the Act requires that the application should be brought to the attention of interested parties and that the application can be inspected at the Council offices. I would content that the law expects an interested party to examine the detail of an application before making a representation. The purpose of the notice is to "bring the application to the attention of the interested parties" (S17) not detail large parts of the application in the newspaper.

9. Reg 26 should clarify the exact content of a notice.

FLOOR PLANS

10. Regulation 23 of The Licensing Act 2003 (Premises Licences & Club Premises Certificates) Regulations 2005 state that plans are required to a prescribed scale of 1:100 and show the information detailed in 23(3) (a) to (j). The Licensing Authority is allowed to accept an alternative scale and most Licensing Authorities are prepared to accept a range of scales.

11. In cases where the applicant has an existing plan we assess the standard of the plan and whether it shows the information detailed in 23(3) (a) to (j). If the plan is in a "worst scale" ie 1:200 or 1:500 then we ask the Licensing Authority if the plan is acceptable (in most cases they accept). However when we receive a plan in a "better scale" ie 1:75 or more typically 1:50 then we have submitted direct to the Council.

12. In a number of these cases the Licensing Authority has invalidated the application due to the scale of the plan, which is better than the regulations require. In most of these cases we have managed to negotiate the acceptance of the plan however for one application the Council refused to accept a 1:50 plan prepared by an Architect which showed all of the relevant information because it was not 1:100.

13. Regulation 23 should stipulate that 1:100 is a minimum standard.

HEARINGS

14. The Licensing Act 2003 (Hearings) Regulations 2005 state in Reg 24 that "Licensing Authority must allow the parties an equal maximum period of time in which to exercise their rights". S13 of the Act defines what is meant by an "interested party" and "responsible authority" and with the applicant I presume these form what the hearings regulations describe as parties to the hearing.

15. The hearings regulations do not specify how a hearing should be conducted and this has led to a range of procedures. The majority have been acceptable however some Councils specify maximum times which are applied to each party. For instance the applicant is allowed 10 minutes then each "interested party" and "responsible authority" is also allowed 10 minutes. In a case with say three responsible authorities and three residents this would mean 10 minutes for the applicant and one hour for objectors (6*10 minutes). The worst example of this practice was a Council who allowed three minutes per party.

16. Such a bias in total presentation times clearly restricts the applicants access to a fair hearing.

Memorandum by the Wine and Spirit Trade Association (WSTA) (RL 06)

The Wine and Spirit Trade Association (WSTA) represents over 200 members involved in the UK wine and spirit industry ranging from producers, importers and brand owners to retailers. It is the only UK organisation which represents the entirety of the supply chain for the off-trade and, as such, is uniquely placed to offer comment on how the Licensing Act 2003 has affected the sector.

The WSTA has been providing advice and support to all members of the trade who require it, irrespective of whether or not they are members of the Association. We have been striving to help everyone involved in the selling of alcohol ensure that they are aware of, and comply with, their responsibilities under the new Licensing Act.

The WSTA wishes to make the following points to the Committee about the implementation of the Licensing Act 2003 and the re-licensing process:

- Under the Licensing Act 2003, licensing authorities' committees have taken on a quasi-judicial function. It is important that these Committees fully appreciate this role, and adhere to the principles set out in the Act, by only taking on hearings when there are objections to applications.
- We believe a mediation function should have been established from the start to deal with potentially-contentious applications to avoid costly hearings at full committee—the large number of hearings that have had to take place has slowed down the whole implementation process for licensing authorities and the trade.
- We have concerns over guidance licensing authorities have been giving to businesses about advertising their applications—local authorities should send out standard guidance with applications stating a clear procedure for advertising licensing applications.
- We would like to see published guidance produced by DCMS for the reviews of licensing policies that will take place in the next couple of years. One aspect of implementation has been the diversity of policies around the country, including several which have been successfully challenged in court.
- A slip rule was put in place for applications for premises licences, provided there were no variations applied for. As this Act made significant changes to licensing conditions, a large number of variations would have been anticipated—the slip rule should have been uniformly applied for all applications to provide more certainty for applicants. At the present time, a huge number of applicants for licences are still awaiting confirmation that they have a new licence in the run-up to 24 November.

— The DCMS s.182 Guidance was not sufficiently clear from the outset which has led to a range of interpretations across licensing authorities—this guidance needs to be clarified. There must also be a review of how licensing authorities interpret and implement this guidance.

— By making licences renewable on date of application, businesses were encouraged to apply as late as possible. While we recognise that this was necessary in order that renewals next year and thereon would not all be at the same time, this did lead to the majority of applications being made at the last minute which has had the effect of holding up the issuing of new licences.

— There was a clear lack of guidance and support from central government for licensing authorities in implementing the Act. LACORS would have been the obvious channel but as their guidance is not binding, authorities have cherry-picked from it to suit them. The newly-formed licensing teams required structured, centralised guidance to encourage a more uniform approach to implementation around the country.

Memorandum from Luminar plc and Luminar Leisure Ltd (RL 07)

This representation is from Luminar plc and Luminar Leisure Limited. Luminar are the largest operator of late night licensed entertainment venues in England and Wales.

Our application process has been for:

Licence conversion—operating premises	5
Licence conversion—closed premises	12
Licence conversion and variation—operating premises	220
New Premises Licence	15
Personal Licences	735

Our total expenditure to complete the process for this company, including licence fees and solicitors fees will be in the region of £450,000.

I made previous representations for the evidence sessions on—The Evening Economy and the Urban Renaissance—March 2005; this addressed the opportunities which the Licensing Act 2003 offered and those that were missed. I do not revisit those points.

The late arrival of the Guidance Notes for the Act from the DCMS would have created difficulties for each local authority in producing their licensing policies. Our receipt of these and the even later finalisation of the forms for application did mean that the necessary preparation by this company for the conversion and variation process had to be on an emergency and priority status.

However, our preparation was most thorough and proved most effective.

Throughout we worked hand-in-hand with our solicitors, Poppleston Allen—a licensing specialist practise: their advice and co-operation was of the highest value.

For each unit manager we produced an application pack (relating to hours, conditions and changes) and an easy to use—easy to prepare operating schedule pack which took account of existing licences and application conditions.

[Our market sector is used to a high level of measures and conditions which take account of the fact our venues are often large, offer public entertainment and trade later at night. These assume customer safety and acceptable impact upon the community. As we felt this is appropriate for all such venues including those now applying for variation to their licences we included almost all of these measures and conditions in our new Operating Schedules.]

The packs were presented to each manager at a series of workshops. Our aim was that our managers (the Designated Premises Supervisors and Personal Licence holders under the new scheme) understood the new Act fully in its entirety and the application process fully.

We advised consultation with representative authorities and requests for variations which met realistic commercial needs whilst taking full account of the four Licensing Objectives and the potential impact upon our neighbours, businesses and residential, and the community. Each potential application was reviewed and finalised by senior management prior to submission to our solicitors.

Our applications, taking into account "grandfather rights" were submitted on a phased basis during June/July, although inevitably there was the last week bulge.

The benefit of the consultation was that all of our conversions proceeded without police representation and that the majority of our variations also attracted no representations or objections.

Approximately 85 applications for variation received representations or objections. The liaison process offered in the Act were utilised fully and three quarters of these were resolved prior to any hearing.

Our applications going to hearing were around 20: this was below our expectations. The hearings were for the most part relatively informal and constructive to all parties. I am sure that all representative bodies and objectors—often residents—felt that their views were fairly considered. We were most satisfied with our outcomes.

Luminar has 10 minor issues outstanding (at 17 October 2005) and is confident these will all be resolved by the Second Appointed Day.

Memorandum from the British Institute of Innkeeping (BII) (RL 08)

The BII, the professional body for the licensed retail sector, welcomes the opportunity to comment on the way in which the re-licensing process under the Licensing Act 2003 has been implemented. We would like to be considered as a witness for this hearing on 31 October.

Background to the BII

The BII is the professional body for the whole of the licensed retail sector and currently has a membership of 17,400 individual members made up of managers, staff, licensees and tenants from both the on and off sectors. We are also supported by 50 Corporate Patrons and Members who contribute to furthering our main mission which is to:

> "Promote high standards of professionalism throughout the licensed retail sector, to encourage new entrants into the industry and to help them develop their long-term careers. To provide all our members with high quality information, skills and qualifications to help them succeed in their business activities."

As a professional body therefore we are fully committed to maintaining the highest possible standards throughout our industry. We set and maintain standards through our wholly owned Awarding Body, the BIIAB. All individual members sign up to our Code of Conduct, which reinforces the professional message that we deliver.

Our qualifications cover a wide range of areas specifically for licensed retail, including full regulatory qualifications such as the National Certificate for Licensees (now replaced by the National Certificate for Personal Licence Holders), the National Certificate for Door Supervisors and the Barperson's National Certificate. We also deliver a wide range of business competence qualifications to assist our members in developing and improving their business performance.

In 2004 we processed 134,745 individual qualifications and since 1992 we have awarded over 600,000 qualifications.

Comments on the Re-licensing Process under the Licensing Act 2003

1. The transition phase has prompted an increase in work for local authorities including setting up new departments but this will not continue at this level into future years. Therefore we believe that the first year's fees should cover the initial work but will become a revenue raising exercise in subsequent years.

2. In this transition year, there has been a huge increase in monetary and time costs associated with the system to licensees. These costs are incurred through advertising, legal fees for a solicitor used to make the application, cost of preparation of plans as well as the licence fee itself. It should be borne in mind that historically, licensees without a Public Entertainment Licence (PEL) were liable to pay £30 for a three year justices' licence. Whilst some of the extra burden is limited to transition, we still believe that the new fees scale for the average pub is still too high, whilst those for more complex, larger entertainment premises are too low.

3. One of the causes for late submission was the lack of financial incentive. There was no discount for early payment in transition—so what about offering a discount for early payment in 2006 and beyond?

4. The licensed trade is unique as its rateable value is based on turnover rather than square footage of the outlet, like other retail businesses. If levels were set by square footage then the bigger premises would pay more than smaller premises. The introduction of more bands would help especially with more complex premises. For example a nightclub in Westminster paid £20k for a Public Entertainment Licence under the old regime will now be paying the same as a much smaller venue. In our view the top bands are too low and the lower bands too high.

5. The BII believes that the best way for a uniform system is for it to be set by central Government and not devolved to local authorities. A standard application process should be applied across the country to avoid local authorities complicating the process by applying their own interpretation and stipulations. The application form needs to be in plain English to accommodate those people for whom English is not their first language or whose literacy levels are not high.

6. In conclusion, the licensed trade was assured by the Government that the new fees structure would be no more expensive under local authorities than under magistrates and that over the next 10 years the new system would save the licensed trade £2 billion. In the face of the evidence above we do not believe this assertion to be true. The new system has been both more time consuming and more costly to an industry that already contributes 5% of the country's GDP and pays £22 billion pa to the Exchequer.

Memorandum by Peter Wright, Environmental Health and Trading Standards Manager, Gateshead Council (RL 09)

The ODPM decision to investigate the problems surrounding the implementation of the Licensing Act is to be applauded. The difficulties experienced during this transition by Licensing Authorities, the Licensed Trade, the public and Responsible Authorities should never be allowed to happen again.

A summary of the lessons to be learned from this process follows.

1. Evidence for 24 Hour Drinking

1.1 There was little evidence to support 24 hour drinking as a means of reducing drink related problems. It has worked in some countries and failed in others. UK subjects on holiday in countries with 24 hour drinking do not always behave in the same way as the local population.

Recommendation

1.2 Future legislation should be based on evidence, and a realistic assessment of how proposals will work across the full range of cultures within the UK.

2. Legal Drafting and Guidance

2.1 The drafting of the Act and Guidance is, at times, "vague", inconsistent and naïve. Much of it reads as "policy" rather than legislation.

2.2 The Guidance fails to clarify many of the most unclear provisions of the Act, for example, whether a Personal Licence Holder must be present whilst alcohol is being sold. Nobody has benefited from the lack of clarity in this Act and Guidance.

Recommendation

2.3 Future legislation of this nature would be better left to those government departments with experience in dealing with criminal legislation, so that clarity and enforceability is inbuilt.

3. Project Management

3.1 The slippage in the implementation timetable has caused significant problems, particularly for local authorities. Many created and filled posts in anticipation of the first appointed day being in 2004, only to have the staff in place with no work to do for considerable periods while awaiting the first appointed day.

3.2 Considering that the implementation date slipped by approximately 14 months, it was inexcusable that application forms and delegated legislation were so late, and contained errors that needed corrective legislation. Surely these could have been ready by January 2004.

3.3 Because the application forms were produced at such a late stage, suppliers of our data management software were unable to build and implement a web application site until six months after the first appointed day.

3.4 Late publication of the forms also led to very few applications being ready in the first four months of the six-month transition period.

3.5 The late publication of fees meant that Councils had to decide on staffing their Licensing Teams at a conservative level, as there was no certainty about the level of income.

3.6 The financial planning cycles of Licensing Authorities were not factored into the project plan for implementing the Act.

3.7 The failure to simultaneously declare the first and second appointed days has resulted in the possibility of a late Parliamentary challenge to the November date, meaning that hundreds of thousands of pounds worth of work by applicants, responsible authorities and Licensing Authorities may be wasted.

Recommendation

3.8 The implementation of future legislation should be properly managed in accordance with the Government's preferred project management methodology, PRINCE2.

3.9 Where bodies other than the Government are involved in such implementation, the project planners should ensure that their policy and financial planning timetables are reflected in the overall project plan.

3.10 Those involved in project planning should undertake reality checks with representatives of those who will be affected to ensure that timescales are realistic.

4 Consistency

4.1 In the Secretary of State's introduction to the Guidance issued on 7 July 2004, there appeared the following paragraphs on page 7:

> "The legislation provides a clear focus on the promotion of four statutory objectives which must now be addressed when licensing functions are undertaken. They are:
>
> — the prevention of crime and disorder;
>
> — public safety;
>
> — the prevention of public nuisance; and
>
> — the protection of children from harm.
>
> But the modernisation of the legislation has also been pursued to support a number of other key aims and purposes. These are of vital importance and should be principal aims for all involved in licensing work. They include:
>
> — the introduction of better and more proportionate regulation to give business greater freedom and flexibility to meet their customers' expectations;
>
> — greater choice for consumers, including tourists, about where, when and how they spend their leisure time;
>
> — the encouragement of more family friendly premises where younger children can be free to go with the family;
>
> — the further development within communities of our rich culture of live music, dancing and theatre, both in rural areas and in our towns and cities;
>
> — the regeneration of areas that need the increased investment and employment opportunities that a thriving and safe night-time economy can bring; and
>
> — the necessary protection of local residents, whose lives can be blighted by disturbance and anti-social behaviour associated with the behaviour of some people visiting places of entertainment."

4.2 By giving almost equal weight to the six key aims and purposes with the four statutory objectives has resulted in a significant degree of confusion in the message about what the Act is for. Substantial parts of the guidance appear to be written to give greater weight to the freedom and flexibility aspects than to the protection of local residents.

4.3 Such lack of consistency has given the media free reign to criticise, and has created concern in the community over, for example, 24-hour drinking. It has also allowed the different agendas of various Government Departments to be exposed in the press, creating the impression that Departments are arguing with each other. The Licensing Objectives are clear, and the Government could have used these as the basis of a consistent message throughout.

4.4 The various timescales prescribed in the Act and Guidance are variously described in terms of calendar days, working days, weeks and months. If a Bank Holiday occurs during the part of the process measured in working days it delays the process by a day. If measured in weeks or calendar days there is no effect. The confusion caused by this has led to applicants advertising the incorrect last date for representations and having to re-advertise or reapply in some extreme cases.

Recommendation

4.5 The objectives of forthcoming legislation should be used as the basis for all future public relations and media activity on that legislation.

4.6 Where legislation and guidance is drafted, one means of defining time periods should be adopted throughout. The unit of the week should be the unit of first choice.

Memorandum by The Institute of Licensing (RL 10)

1. The Institute of Licensing is pleased to make a submission to the Committee on the Office of the Deputy Prime Minister's enquiry into the "re-licensing" under the Licensing Act 2003. The Institute would have wished to have made a more lengthy submission but have been constrained by the time available to do so.

2. The Institute is a company registered by guarantee, whose Board of Directors have approved the contents of this paper. The Institute represents over 500 professionals involved in licensing in England and Wales, within the public and private sectors. It is organized on a regional basis, and the chairs of each region are also Board Directors.

3. We feel that it is important to say what we understand the nature of the enquiry by the Committee to be. We understand that the Committee wishes to understand the mechanics of the implementation of the Licensing Act 2003, and not its merits, although in some areas the two issues are difficult to separate.

4. Pre-Legislative Consultation

We were pleased to see that the Department for Culture, Media and Sport arranged various working parties to advise on the-then Licensing Bill's progress through Parliament.

5. Many of our Members felt that their organisations were however excluded from this rather opaque process, which we feel was dominated by the pub industry. Local authorities in particular were represented by the Local Government Association/Association of London Government, and the Local Authorities' Co-Ordinators' of Regulatory Services. Whilst we value their representative role, we feel that more transparency would have greater aided preparation for such major reforms.

6. Post-Royal Assent

The Act received Royal Assent in July 2003. Licensing authorities are required under the Act to produce statements of licensing policy, which must be written with regard to statutory guidance issued by the Secretary of State for Culture, Media and Sport and approved by Parliament under section 182 of the Act.

7. The final guidance was not published until July 2004, which led to a nearly a year of uncertainty and confusion amongst licensing authorities. As the policies had to be approved by meetings of the full licensing authorities by December 2004, this only gave five months in which to draft, consult upon, and publish the policies—and which many authorities endeavoured to include the 12-week consultation period recommended by Cabinet Office guidelines.

8. The time between publication of the policies and acceptance of the first "re-licensing" applications on 7 February 2005 was only a few short weeks which also included the Christmas and New Year period.

9. This delay had an impact on drafting policies, which in any event mostly replicate provisions of the Act or of the statutory guidance and certainly restrains licensing authorities from acting strategically, as we explain below.

10. Application forms

We feel that the application process, both for existing and for new licence-holders, was unnecessarily complex and burdensome for what was purportedly an exercise in deregulation.

11. Applications to convert extant licences had to negotiate a 26-page form (plus associated forms and public notices). We say the word "negotiate", because in many instances many pages were required to be left blank but a signature was required on the very last page.

12. We think the lack of a "slip rule" in the statutory instruments accompanying the Act led to the system being more complex and burdensome than it ought to have been. Although the Minister of State wrote to licensing authorities in August 2005 congratulating authorities on their pragmatic approach, the process would have been smoother from the outset if this facility had been available.

13. Specific examples of where this would have been beneficial have included:

- where an applicant might have delayed placing the public notice of their application for some reason. Rather than rejecting the application, the licensing authority could have allowed the consultation period to have started running from the time of the application
- where an applicant has not, for some reason, served copies of the application on each of the "responsible authorities" under the Act, the time for making representations could have started from the date the responsible authority received the application
- interested parties whose representations on the applications were made after the statutory 28-day period could have been accommodated for good cause—for example, if they had been on holiday, or the application had been wrongly advertised.

14. We note that the statutory instruments containing the detailed application forms and other mechanics of the Act were only available on the DCMS website at 7 pm on 6 February 2005, the day before licensing authorities could accept applications.

15. Even at this point, the application forms contained a number of typographical and other difficulties (including not being available for electronic completion) and these were not rectified for some time.

16. This led to very, very few applications being made during the first few weeks of the transitional period, and an avalanche of applications near to the 6 August deadline. It led to both late and rejected applications. We are confident that this owed more to the logistical difficulties caused by the very late publication of the statutory instruments than for any other reason.

17. Two examples of deficiencies in the application forms to convert and vary premises licences were:

- a failure to request full details of the designated premises supervisor's personal licence when the premises are authorised to sell alcohol. The licensing authority is required to state on the premises licence which other licensing authority has issued the personal licence, and the licence number; however, this does not have to be provided on the premises licence application form. Consequently, licensing authorities have to make further enquiries of applicants in many cases to verify this information; and

— the premises licences and club premises certificates have to be issued with a plan of the relevant premises attached. Applicants have to only submit one copy of the plan with their application, but licensing authorities are also required to retain a copy of the plan as part of their statutory licensing register. This has led to a need for plans to be copied at the licensing authority's expense.

18. We feel that the process would have been handled more effectively if applications for personal licences had been handled first, followed by those for premises. The successful staged introduction of private hire vehicle licensing in London by Transport for London/Public Carriage Office shows that such an approach can work.

19. Embedded restrictions

Schedule 8 of the Act requires extant licences that have been converted to new permissions under the Act to be subject to the same rights and restrictions as those they replace. Whilst the schedule specifies four further Acts[4] where these so-called "embedded" rights and restrictions should be drawn, the specific rights and restrictions are not listed.

20. Repeated calls were made by Members of the Institute and many others for DCMS to provide clarity as to which rights and restrictions would continue to apply to new permissions following "re-licensing". In December 2004, the Chairman of the institute, Mr Kolvin, of counsel, produced advice as to the nature of these embedded restrictions. These had been consulted upon before publication, and were widely distributed. In May 2005—some six months later, and three months before the end of the transitional period—DCMS published their guidance which was at variance with that of Mr Kolvin. We were disappointed that DCMS had failed to take the opportunity to provide clarification on restrictions other than under the Licensing Act 1964. This has led to an enormous amount of confusion as to the nature of these restrictions, which are, crucially, conditions on the new authorisations now being issued.

21. We are also concerned that the advice published by DCMS may indeed be at variance with the Secretary of State's statutory guidance, which is a further example of an issue we have highlighted above.

22. Licensing Committee Hearings

We feel there are a number of difficulties posed with the over-prescriptive regulations governing hearings before the licensing authority. In particular, the 28-day rule for receiving representations we referred to above is too inflexible.

23. Representations can only be rejected on specific grounds. This has led to very many hearings being held where there have only been one or two representations from interested parties. We feel that the licensing authority should be given more flexibility in which to deal with representations in these circumstances.

24. We also feel that the system for setting up a hearing is driven too much by paperwork:

(a) the licensing authority must send copies of representations to the applicant;

(b) the licensing authority must send written notice of the hearing to all parties to the hearing;

(c) all parties must reply in writing indicating their intention to attend the hearing, be represented at the hearing, or not to attend; and

(d) the licensing authority must give notice in writing if a hearing is cancelled.

25. Strict time-limits apply to each stage, including the period within which the licensing authority must hold a hearing.

26. Given the late confirmation of the relevant statutory instruments (around 17 months after Royal Assent and just a short time before the First Appointed Day), inadequate time was given to licensing authorities to put robust procedures in place from the start.

27. The time for a licensing authority to determine applications starts to run from the time it receives the application. We feel that this caused its own difficulties, with many licensing authorities unable to arrange hearings within the required time. Far better, in our view, would have been a requirement for licensing authorities to have published a set of hearing dates a year in advance, and for applicants to ensure their applications reached the licensing authority in time to be considered on the pre-published date.

28. We accept that the regulation for public hearings needs some form of framework, but we find that all of the timetables (and indeed the regulations themselves) are highly prescriptive. No leeway, discretion or room for manoeuvre is possible even for example when all the parties to an application are in agreement. This truncated timescale, particularly for holding hearings, severely limits the possibility of holding meaningful negotiation and mediation between applicants and objectors—which is one of the key features that the Act was designed to introduce.

29. Licence Fees

The Government argued that start-up funding for licensing authorities was unnecessary under the Licensing Act 2003, because there would be no inspection or enforcement costs during the transition period, and fees would still be received from the other licensing regimes which still had to be administered.

[4] Licensing Act 1964; Children and Young Persons Act 1933; Cinematographic (Safety) Regulations 1955; Sporting Events (Control of Alcohol) Act 1985.

30. We are concerned, as is the Local Government Association, that the additional costs of re-licensing will be passed on to Council Taxpayers. At the same time, we are concerned about the level of licence fees being levied, with the lowest fees not being low enough for small clubs and similar organisations.

31. We are also concerned that the annual maintenance charge will lead to licensing authorities incurring additional expenses in recovering unpaid charges as civil debts, which do not invalidate the currency of the licence concerned.

32. We are pleased to see that DCMS seems to have learnt this particular lesson in the Gambling Act 2005, under which a failure to pay the annual fee leads to the licence lapsing.

33. We are also concerned that costs have been incurred by other responsible authorities under the Licensing Act, such as Trading Standards and child protection bodies, who do not receive any funding from the licensing fee arrangements for their work.

34. Pre-Second Appointed Day

Given the difficulties—in logistical terms—of preparing statements of licensing policy, the Secretary of State and the Minister of State wrote a joint letter to licensing authorities on 30 September. Whilst we not wish to comment in general on the contents of that letter, we do wish to comment that such ministerial statements add to confusion and reduce clarity. Licensing authorities may become unclear over how much weight they should give to the letter, given they are already under a duty to have due regard to the statutory guidance.

35. As an example, paragraph 3.9 of the guidance gives the impression that longer licensing hours are the Government's only approach to dealing with issues associated with late-night premises. Paragraphs 6.5 and 6.6 push licensing authorities towards longer and later hours, and the Secretary of State's subsequent letter say that longer hours are not the answer, but that concerns of local residents must be given primacy.

36. It is expected that the Act will become fully effective from 24 November 2005. However, even before that, the Government has announced that the statutory guidance is to be reviewed. We view this as most unhelpful, particularly in relation to those applications currently in preparation, before licensing authorities, and being heard by the courts on appeal.

37. This review is likely to require a further revision of statements of licensing policy, resulting in more resource implications both by licensing authorities and also respondents. We are concerned that this process may take place against the backdrop of preparation and consultation for the Gambling Act and the licensing policies that that legislation demands, and preparation for the Charities Bill which will in particular affect authorities in London.

38. Appeals

We are pleased to note that, with one exception, there has not been a need for appeals to be made to the higher courts.

39. We are concerned however about the number of appeals being made to magistrates' courts, and the impact this has both on the hearing of those and on other matters. West Hertfordshire Magistrates' Courts, for example, have said that licensing appeals will not be listed before criminal or family law matters, leading to delays of four to six months for appeals to be held. Horseferry Road magistrates' court in London currently has 100 appeals against Westminster City Council alone.

40. Public Information

The amount of information available to applicants in certain sectors, and to interested parties in general, on the new licensing laws produced by DCMS was lamentable.

41. We would have expected such a fundamental programme of reform to have been supported by regular, high-quality information to have started before the First Appointed Day. In practice, a telephone helpline was introduced this spring, which we believe to have been of very limited use, and advisory leaflets in languages other than English were published during the middle of the summer.

42. It was left to many licensing authorities and trade associations such as the British Institute of Innkeeping to provide information and advice to their respective constituencies. For many licensing authorities, these were unplanned costs.

43. Further Matters

We welcome the transition process under the Gambling Act 2005 being conducted by DCMS. We welcome the more proactive stance on consultation that has already been started, including publication by the Gambling Commission of a clear timetable for reform and consultation on probable fee levels.

44. Many of the premises now licenced under the 2003 Act have been subject to previous licensing regimes by licensing authorities. However, the Act constrains officers of the licensing authority—who often have first-hand knowledge of the characteristics of premises in their area—from making representations or applying in due course for those licences to be reviewed in appropriate cases. We feel that this facility would have represented an important element in terms of public protection and public safety.

45. We are also concerned about how the changes in the on-licenced trade have affected public perception of their industry, particularly in relation to the tourist economy. There is little confidence in the Institute that this perception will be altered by the change.

Memorandum by The Association of Licensed Multiple Retailers (ALMR) (RL 11)

The Association of Licensed Multiple Retailers (ALMR) is the trade body of the licensed retail sector—principally pub, bar, club and restaurant operators. Currently, just under 100 companies are in membership, between them operating over 30,000 outlets—around half the UK pub and bar estate. Members include major pub companies such as Punch and Enterprise—whose pubs are operated as individual small businesses—national chains of managed operators such as Yates's, Regent Inns and Laurel and the retail estate of regional brewers. However, the bulk of our membership is derived from small independent companies operating 50 outlets or less under their own branding.

You will understand the short timeframe available for this consultation has limited the extent to which we are able to fully survey our members. Therefore this response is limited in depth and scope. However, I submit a brief synopsis of the information we currently have available and my organisation would be more than happy to appear before the Committee in future in order to expand on the key points contained within our submission.

My organisation has been involved closely with Government in the drafting and subsequent implementation of the 2003 Act. We have made extensive efforts to ensure that the pub sector was prepared fully for the introduction of the Act and in fact 100% of ALMR members submitted licence applications before 6 August deadline. However, there were a range of failings in the introduction of the Act. I highlight the main areas of concern below in addition to a number of suggested reforms to ease the flow of future applications through the licensing process.

— the short timescale between regulations being published and commencement of the transition period led, in our opinion, to a lack of clear understanding of the application of law by some licensing authorities and their legal officers;

— we believe that not all authorities have appreciated the quasi-judicial nature of their new functions. As such they are applying locally developed policies which are out of step with national guidelines;

— the absence of a slip rule, which would otherwise allow local authorities to correct minor errors in applications rather than the wholesale rejection of applications thus incurring additional costs in time and money for applicants and local authorities;

— over regulation on the floorplans required to be submitted to licensing authorities was a cause of contention nationwide. Many applicants which had plans available found these rejected for being of the wrong scale. This led to massive costs in having new plans drawn up and, as the deadline of 6 August approached, left many concerned that applications thus rejected would not be resubmitted in time. This issue hit small operators disproportionately;

— making the date on which annual fees are due one year on from the granting of an application, thus reducing the incentive for early applications and generally leading to the majority of applications falling near to 6 August deadline;

— limited clear national guidelines on the scope of advertising required by all applicants in the local press. A number of organisations have found that adverts deemed suitable by one local authority are not deemed so by a neighbouring one. In some cases this has lead to additional expense as adverts already drafted and submitted to the local press are rejected by the relevant licensing authority. We have also found that in some areas the capacity of the local press to carry adverts is exceeded by demand from local licensees. In these cases applicants are unable to meet their statutory duty to advertise through no fault of their own.

  We note that some local authorities have chosen to raise the issue of applications with all residents within a local radius of applications for variations of an existing licence. Whilst we welcome this effort to include residents by local authorities but suggest that in such cases licensees and licensing authorities might come to an arrangement over the necessity of taking out adverts in the local press.

— anecdotal evidence that some local authorities are initiating objections from responsible authorities in the absence of residential objections in order to force a full hearing before a licensing committee;

— lack of guidance on completing application forms lead to a number of various means by which forms might be completed and as such caused confusion. Authorities interpreted applications in different ways and therefore chains operating across local authority boundaries often found no standard company format might be adopted. The complexity, length and requirement to submit forms to eight separate authorities was, in our opinion, partially responsible for a number of smaller operators delaying;

— asking for variation and conversion as a dual system overburdened all parties, who were trying to second-guess others in the industry and therefore felt pressure to apply. Conversions could have had six months to go through and then variations could have been applied for thereafter;

— licensing authorities should adopt a mediation function in advance of hearing future applications and objections before a full licensing committee. In addition to preserving local harmony such a policy will enable licensing authorities to minimise the cost burden on the local community. In fact residents' reps were generally not sent through to applicants until a Notice of Hearing was sent. This only gave 10 days to try to contact residents & have an opportunity to negotiate; and

— the review of the Act must include a review of the manner in which disparate authorities are interpreting the Section 182 Guidance.

Memorandum by the Corporation of London (RL 12)

The Corporation of London welcomes the opportunity to make a short submission to the Committee ahead of their one off evidence session on 31 October 2005 and would like to offer the following observations.

The timetable has been very demanding for licensing authorities with most applications being submitted in a very short period before the deadline at the end of July and the start of August. Whilst the Corporation managed to hold all its transition hearings, it did so under considerable pressure of time and it is understood that many other authorities experienced difficulties. The time periods for hearings are very difficult and hearings must be held even if the parties are close to agreement. Failure to hold a hearing results in an automatic deemed refusal, and is open to appeal. When parties are close to agreement however, the hearing may be unnecessary and resources could be better employed elsewhere. The expectation placed on Members to be available for a great many hearings in a prescribed short period is arguably unreasonable, particularly as many hearings have fallen within the recess period. The small size of Licensing Committees has exacerbated the problem as has the relatively late publication of regulations and scale of fees.

Many applicants have found the forms to be long and complex with even application solicitors disagreeing on what information needs to be included. The information required is in many places imprecise and does not, for example, require dates of birth to be included. This results in added difficulties should the police wish to comment on a personal licence application.

Government guidance for applicants invited licensing authorities to discuss applications and help applicants complete forms. In practice, this comment turned out to be unhelpful. Whilst Officers did everything possible to assist, given the volume of applications, the relatively small number of staff was unable to spend the long periods of time each enquirer might have wanted. In monetary terms the time needed to provide the advice and assistance some applicants requested would cost more than the licence fee let alone the other costs the fee is expected to cover.

There are also difficulties associated with the advertising requirements. The detail required in the notice to be placed in the window of the applicant premises should be better prescribed and, for example include reference to any changes in the licensing hours. The newspaper advertisement can be an unnecessary and expensive requirement especially in the City where there is no true local paper. This usually means the more costly option of the Evening Standard.

There has also been a certain amount of difficulty in determining the conditions which should be applied to licences issued under the new legislation. This arises in particular where the nature of conditions imposed under the old regime lack precision. In consequence the obligations to be imposed under the new legislation can only be established inferentially.

Memorandum by Andrew Fisher, Group Manager—Licensing, Bolton Metropolitan Borough Council (RL 13)

Please find below a brief summary of some of the issues which have arisen during the course of our work to implement the Licensing Act 2003 in Bolton.

The comments are those of officers involved in the management of the licensing function in the town.

PERSONAL LICENCES

No date of birth is required on the form making vetting by the police impossible.

The identity of the person who endorses the photograph of an applicant is unknown, they could not be identified if needed and there is no declaration as to it being a true likeness.

PREMISES LICENCES

It has been difficult to include the name of the DPS on licences because of the timescales built into the processes (two months for premises but three for personal licences).

The home address of the DPS is sometimes not given on the premises licence application.

This has meant that, where the DPS has not been specified because the person who will fulfil that role has not yet been issued with a personal licence, the Child Protection Unit is unaware of who will be in day to day control (also see "vetting" comment above).

This Council took issue with the lack of detail in advertisements which stated that the application was for longer hours without stating the proposed opening hours. LACORS and our lawyers advised that we could not insist on the opening hours being included. This seemed to completely frustrate the objective of advertising. We understand that revised guidance has now been issued.

We have received an application from a market stall. The Act obliges us to charge a fee for the which relates to the whole of the market complex.

Operating Schedules—we have found that very little detail has been included by applicants.

Transferring embedded restrictions has made the process very time consuming. We have adopted a wholesale transfer approach with and added a "where applicable" proviso.

Building Control officers have expressed concern that the lack of programmed inspection by their officers will lead to reduced public safety.

Applicants do not need to have an interest in the property. We have had more than one application for the same property and have been threatened with an injunction to prevent a premises licence being issued.

The (predictable) last minute rush has put licensing authorities and all the responsible authorities under immense pressure and has most certainly meant that some applications have not been considered as carefully as they should have been.

The timescales with respect to hearings have been difficult to adhere to during the "peak" period for hearings, particularly where an error has occurred.

The very late release of forms and regulations created difficulties for licensing authorities and delayed the implementation of, and training on, essential software systems and delayed the issuing of application packs.

Trading standards were added to the list of responsible authorities.

Licensing policy statements were required to be published before the regulations were published.

The published guidance from the DCMS was significantly different from the draft guidance and the changes were not highlighted.

There was no clear guidance for responsible authorities to assist them in making informed judgements.

The size and prominence (or rather the lack of it) has been the subject of repeated criticism from the public.

BOTH

Was it necessary to require all existing pubs and their landlords to make application to convert their existing permission when it was all but automatic?

CLUBS

It has often been difficult to verify what type of entertainment permissions clubs could "convert" where they did not hold a public entertainment licence.

Memorandum by the Local Government Association (LGA)/Local Authorities Coordinators of Regulatory Services (LACORS) (RL 14)

INTRODUCTION

1. The Local Government Association (LGA) speaks for nearly 500 local authorities in England and Wales that spend some £78 billion pounds per annum and represent over 50 million people. The LGA exists to promote better local government. The Local Authorities Coordinators of Regulatory Services (LACORS) provides advice and guidance to councils on regulatory matters, including licensing and gambling. We welcome this opportunity to share local authorities' experience of implementation of the Licensing Act 2003 (the Act) and have some suggestions for lessons to be learned. It is hoped these suggestions are taken on board before the implementation of the Gambling Act 2005 by the Department for Culture, Media and Sport (DCMS) next year.

2. The LGA has been, and remains, supportive of the broad modernising principles underpinning the Act, such as the transfer of responsibility for liquor licensing from Magistrates' Courts to councils, the opportunity for local people to have a greater influence on licensing decisions and the potential benefits to tourism and regeneration. We will continue to work with DCMS and other stakeholders to improve the legislation.

Background

3. The transition or "re-licensing" period started on 7 February 2005. Licence holders had six months to apply to transfer or vary their existing licences (liquor, entertainment, late night refreshment, night café, registered club) or lose their current guaranteed licence permissions ("grandfather rights"). The opportunity to secure grandfather rights closed on 6 August. The new system is to go "live" on 24 November 2005 (the "Second Appointed Day") when all existing licences will be cancelled, regardless of expiry date. This means that businesses that have not had their new licences granted by 24 November will be unable to offer licensable activities.

4. Local councils have embraced the changes with preparation for these new duties starting in 2003–04. Attached at Appendix A an example of a local newsletter aimed at licensees produced in March 2004 by Woking Borough Council. As we approach the last weeks of the period for re-licensing 180,000 or so premises, it is clear that, while events since 7 February have certainly confounded expectations, councils have coped extremely well with sometimes trying circumstances. A chronology of key activities in the process is attached at Appendix B.

5. In terms of the impact on local authorities, the transition period was, in our view, characterised by three main factors:

— the lack of applications for the first five months of the six month "grandfather rights" period;
— problems inherent in the legislation and guidance; and
— the delay in laying regulations and providing advice by DCMS.

6. Many of the problems with the legislation and guidance were raised by stakeholders during pre-legislative discussions with DCMS and we are in broad agreement with the British Beer and Pub Association in this regard. More recently the LGA has reached agreement with the government to review the problematic areas from November 2005.

7. The process of converting licences from six different regimes to one is necessarily complex and we accept that mistakes were made by some local authorities. LACORS has set up a referral system with the trade associations where evidenced instances of difficulties with councils, caused for example by misunderstanding parts of the legislation, would be followed up by LACORS. Of the 60 cases taken on by LACORS, 20 were found to have some substance, and by working closely with the individual licensing authorities the issues have been resolved. We consider this low rate to be testament to the professionalism and hard work of local licensing officers over the last 18 months.

Rate of Applications

8. Despite indications from the trade that there would be a rush of applications in February, the rate of applications was worryingly low:

— by the end of April less than 5% of expected premises licence applications had been received;
— by the end of June an average of 14% of expected premises applications had been received;
— by 6 August an estimated 85% of applications were received, the vast majority (about 120,000 applications) in the final two weeks; and
— since 6 August the rate has tailed off and the overall position remains at about 85–95%.

9. We believe that there were a number of reasons for the lack of applications in the first five months:

— a lack of awareness of the changes, particularly in small businesses;
— complex legal issues, such as embedded rights and restrictions;
— the need to provide substantial amounts of information with the application, including new plans and copies of old licences;
— the delay in providing forms that could be completed electronically; and
— the late laying of Regulations.

10. Councils had staff and structures in place ready for 7 February and, in response to the lack of applications, those resources were put to work to encourage and support applicants in a variety of ways including: local licensing groups, road shows, seminars and workshops, face-to-face meetings, mail-shots, regular newsletters, guidance documents, local media and phone calls to all known premises. Attached at Appendix C is an example of one council's communications plan (Leicester City Council). Some other specific examples are:

— Calderdale Metropolitan Borough Council sent out regular mail-shots to licensed premises and arranged an appointment system for people needing assistance with the forms, including evening advice sessions;

— Canterbury City Council arranged over 30 seminars, issued press releases and conducted radio interviews;

— the Royal Borough of Kensington and Chelsea made personal visits to every licensed premises in the Borough and met with approximately 200 licensees on a one-to-one basis to assist with the completion of the forms;

— Cardiff City Council issued press releases, sent application forms to all existing premises licence holders and organised seminars to provide detailed guidance and advice on the application procedure; and

— at a national level, a telephone line, set up by the LGA and LACORS and funded by DCMS, to give applicants basic information has had over 850 calls, mainly from small businesses, since it opened in mid July.

11. The increase in applications just before the 6 August has caused huge logistical problems for authorities. Apart from the number of applications to be logged and processed, the Act sets out a statutory time limit of two months within which those pre-6 August applications must be determined. The two month limit does not apply to applications received after 6 August and, given the current workload, there is no guarantee that such applications will be processed in time for 24 November.

12. During the transition period large numbers of applications had to be rejected because licence holders were unable to provide all the information required in the prescribed format or there were minor errors. The application regulations are very unforgiving of small mistakes, that can be easily corrected, but which result in the rejection of an application as the licensing authority has no discretion in these matters.

Problems Inherent in the Legislation and Guidance

13. We believe that the design of processes and procedures, as well as the level of prescription in the legislations and Secretary of State's guidance, is responsible for the widespread dissatisfaction with the process felt by local authorities. Rather than supporting councils in doing a good job, the legislation restricts councils to such a degree that the transition period has been more bureaucratic, more painful and certainly much more costly than it needed to be. There are many examples of difficulties caused by the legislation and guidance; below we set out the issues councils tell us have caused most problems.

Timescales for transition period and determination of licences

14. The Act requires that the period for applications for grandfather rights be six months and that applications received within this period be determined by licensing authorities within two months. Default options apply if the deadline is not met: in the case of a straightforward conversion the licence is deemed granted; in the case of a variation application, for example for extra hours, the application is deemed refused. The only way for an applicant to get the variation determined is to appeal to the Magistrates' court against the refusal, incurring extra costs for all parties.

15. The close of grandfather rights on 6 August fell on a Saturday, causing extra pressure on councils to keep offices open or have a deposit facility available. Many disputes arose after the event when applications received on Monday 10 August but posted on 5 August were deemed to have missed the deadline.

Restriction on the size of Licensing Committees

16. The Act restricts the size of the main Licensing Committee to 15 members, with up to five sub Committees of three members permitted; Committee proceedings are also prescribed. These restrictions apply to all 376 licensing authorities, regardless of size or workload. Other council committees are not restricted in this way.

17. Councils are getting many more representations on variation applications than expected (about 50%) which means a Licensing Committee hearing must be held within the two months period. One small District Council reports that 44 hearings were scheduled in a five week period; another authority held 19 hearings back to back over three days. For large authorities hundreds of hearings may have to be arranged. Many hearings are not going ahead at the last minute as mediation between applicants and residents seem to be working, but the work, and costs, involved in setting up the hearing, producing reports etc remain. A few authorities have reported that the number of hearings is beginning to impact on other important council business.

Absence of a "slip rule"

18. A slip rule, such has operated successfully in other local authority licensing legislation for many years, enabling the licensing authority to waive irregularities which do not prejudice anybody would certainly have reduced the number of rejected applications. In practice, while many councils were willing to be "pragmatic" in their approach to applications in order to assist applicants, the inability of councils to be flexible within the law has led to ill feeling and accusations of inconsistency from businesses.

Consultation with the wider community

19. The regulations require applicants to advertise their application in the local paper and to put an A4 notice in the window of the premises; residents must make their representations within 28 days of the application being made. Many residents complain that these methods are ineffective and that by the time they became aware of the application the deadline had already passed, particularly during holiday periods. A lack of clarity about the wider role of councils as community leaders has led to controversy with some applicants accusing councils of encouraging representations if they publish details of applications in local newsletters or on the council website. Similarly, a lack of understanding of the role of elected representatives in consulting and speaking for their constituents, while avoiding bias or maladministration, has led to pressure on authorities from the business sector.

National fee structure

20. The fees for licence applications are set out in the regulations. The government's policy, which the LGA supports, is that the fees should achieve full recovery of the administrative, inspection and enforcement costs falling on any licensing authority associated with their licensing functions under the Act, including start up costs. Additionally cost recovery should be of the full cost to the local authority, not just the costs of the licensing authority, ie the costs to "responsible authorities" such as environmental health, planning, social services and Trading Standards.

21. However, the LGA has long argued that the assumptions and principles that underpinned the fees structure were flawed and would not achieve the government's policy intention. A recent survey of licensing authorities by the LGA/LACORS shows that, as predicted, costs have outstripped fee income received by many millions of pounds. The following table shows the actual costs and income for 2004–05 and the projected costs and income for 2005–06 for England and Wales:

LICENSING ACT 2003	*2004–05 Actual Amount*	*2005–06 Projected Amount*
Total Direct Costs	£34,890,682	£63,703,060
Total Indirect Costs	£11,034,965	£20,934,466
Total Capital Financing Costs	£616,035	£691,621
TOTAL COSTS	£46,541,682	£85,329,148
TOTAL INCOME	£7,478,861	£53,346,565
	–	–
TOTAL SURPLUS/LOSS	**£39,062,821**	**£31,982,583**

DELAYS IN LAYING REGULATIONS AND PROVIDING ADVICE BY DCMS

Late laying of Regulations

22. Most of the operational detail under the Act, such as applications forms, plans and advertising requirements, is contained in the regulations. The regulations were not laid until 13 January 2005, 18 months after the Bill was passed and just over three weeks before applications could start. This left councils with very little time to develop procedures, train staff and publicise the requirements. It also caused problems with software installation as the relevant licensing modules could not be completed and fully tested in the time available.

23. These difficulties were compounded by the application forms being amended on the Friday evening of 4 February, which meant that many early applications were rejected for being on the wrong form. The Fees Regulations, not laid until 24 January 2005 when local authority budgets were already set, were amended on 22 February 2005, two weeks after applications commenced, leading to further confusion and strained relations with applicants.

Advice from DCMS

24. As stated above, the legislation is complex and as issues have arisen councils, through LACORS, have sought clarification from DCMS as to the meaning or policy intention behind the legal provisions. This mechanism was set up in 2003 and many of the issues have been resolved, albeit some with delays. The paragraphs below set out a crucial issue that is still causing problems and in some cases holding up the issuing of new licences.

25. Premises that benefited from grandfather rights were converted to the new system with all the rights and restrictions from the old licence converting to conditions on the new licence. Those rights and restrictions arose from many different pieces of legislation and, in the case of liquor licences, were often not recorded on individual licences.

26. Councils, not being the liquor licensing authority, were not familiar with the liquor legislation and LACORS requested in November 2004 that DCMS provide a full list of rights and restrictions in the statutory guidance under the Act. In the absence of the department following our recommendation legal opinions were commissioned by individual authorities, professional organisations and businesses. LACORS continued to ask DCMS for a view which was finally provided, although not covering all the previous legislation, in May 2005.

LESSONS TO BE LEARNED

Central planning and preparation

27. Some suggestions from local authorities to make the process more effective:

- When all stakeholders are in agreement then government departments should have a sound policy basis for rejecting those views and communicate it to stakeholders.
- All relevant stakeholders should be represented and no single sector should predominate.
- The legislation would have benefited from pre-legislative scrutiny.
- Simpler regulations, carefully drafted.
- Desk top piloting of forms and processes.
- Proper project planning for implementation with robust governance arrangements, sufficient capacity and resources.
- A needs analysis of the various trade sectors to be carried out in terms of awareness, media campaigns and advice.
- Legal information should be made available in good time—it is not good enough to say that the courts must decide.

Local authority discretion

28. We believe that the decision to remove council discretion was a mistake. This meant that councils, applicants and residents became frustrated by the inflexibility of the legislation. We would like to see greater flexibility brought back into system in line with ODPM's stated aim of increased freedom for local councils.

Local authority costs

29. DCMS invested no money "up front" to get the system ready and councils are now carrying significant deficits as a result. The 2006–07 financial year will be difficult for local authorities as the underlying grant increase could well be less than 1%, so even marginal cost pressures could impact on council tax. The LGA and LACORS will continue to work with the Independent Fees Review Panel and would like to see changes made to the Fees Regulations before the next financial year to recoup these losses and ensure that further deficits are not accrued.

Memorandum by the Magistrates' Association, Judicial Policy & Practice Committee (RL 15)

1. The Magistrates' Association of England and Wales represents lay justices whose Licensing Committees have traditionally administered the alcohol licensing laws and whose courts have been responsible for the first stage appeals relating to Public Entertainment Licences issued by local councils.

2. Under the 2003 Licensing Act, local authorities became responsible for all alcohol and entertainment licences, along with licences for the sale of hot food after 2300 hours, which is also a part of the 2003 Act. However, the Magistrates' Courts remain as the appeal court for all those who disagree with decisions made by local council licensing committees.

3. Magistrates' courts also deal with those who commit offences under the Act and see, on a day to day basis, the consequences of over-indulgence in alcohol, whether it results in stranger on stranger violence, domestic abuse or drink driving.

4. In view of the narrow focus of this hearing, we would only want to comment on the issue of the handling of the appeals process that arises as a result of the re-licensing period after the First Appointed Day in February 2005. Magistrates' Courts also have an on-going role as the appeal court for those who wish to appeal decisions either on the review of licences or applications for variations or new licences filed after the 6 August 2005. However, these matters are not issues of re-licensing.

5. Our main concern regarding the handling of appeals during the re-licensing period that started in February 2005, was first expressed to officials at DCMS during a meeting of the Licensing Advisory Group in April 2005, and then as part of a joint letter from ourselves and the Justices' Clerks' Society, sent to James Purnell, the Minister at DCMS responsible for the implementation of the Act on 3 June (see copy attached).

6. This concern, related to the potential problem of those geographical areas where there might be large numbers of appeals that needed to be heard: Westminster is an obvious example. The bunching of applications by licence holders towards the second half of the six month period when existing licensees could both protect and apply to vary their existing licence terms, meant that some areas, where there are a large number of licensed premises, could face problems if there were a significant number of appeals against decisions on variations. If local authorities failed to deal with any requests for variations during transition, they were "deemed refused" and could also then be appealed.

7. Any appeals under the 2003 Act require the provision of courtroom space, a bench of three trained magistrates and a legal adviser, plus other ancillary staff. Such appeals will necessarily compete for limited court space with other regular court work and a fluctuating volume of criminal trial work that depends largely upon the level of not-guilty pleas.

8. As a consequence, were there to be a significant number of appeals under the 2003 Licensing Act in a particular area, these appeals might not be listed until well into 2006. Even before the government's decision to review the Guidance issued under the 2003 Licensing Act, this posed potential problems for licensees at the bottom of the queue, who might have to wait longer than their neighbours for a decision. Any revision to the Guidelines could further exacerbate this situation, with all original hearings likely on the original Guidelines and some appeals being covered by those Guidelines and others by any revised Guidelines. Of course, the Guidelines are only guidance and not prescription, but their purpose was to add a degree of certainty that would assist all involved in the licensing process.

9. Our suggested solution, based upon the fact that from 1 April 2005 magistrates have the capability to hear cases anywhere within the jurisdiction of their National Commission, and not just within their local area, was to identify potential licensing appeal "hot spots" and for the relevant authorities to seek means by which additional teams of magistrates and legal advisers might be asked to volunteer to move into these areas from elsewhere, in order to cover just this potential short-term transitional problem. As the DCMS are the lead Department on Licensing, the suggestion was made to them. However, it was also made to officials at the DCA at the meeting of their regular Licensing Transition Group that was established in the autumn of 2003.

10. To date, we are unaware of any practical steps having been taken at a national level to deal with the potential problem of "appeal bunching" or "overload" in a particular area. It may well be that the officials at DCMS, who are monitoring the progress of the 2003 Act, have discovered that no such "hot spots" for appeals are likely to arise. Individual Courts Boards may seek more local solutions through their discussions on listing issues at meetings of the Justices' Issues Groups. However, some national guidance to these groups on strategies for dealing with any potential problems might still have been useful.

11. The Magistrates of England and Wales are committed to offering the highest possible level of service to all users of their courts. We acknowledge that problems during the transitional period are a short-term phenomenon, but we would not want any delays in the hearing of appeals under the 2003 Licensing Act to be seen as a consequence of inaction on our part.

Supplementary memorandum by the Magistrates' Association, Judicial Policy & Practice Committee (RL 15(a))

LETTER TO JAMES PURNELL MP, DCMS DATED 3 JUNE 2005

LICENSING ACT 2003: SECOND APPOINTED DAY

The Magistrates' Association and the Justices' Clerks' Society have worked together very effectively over the forthcoming transfer of licensing to Local Authorities, and are anxious to ensure a smooth transition.

One area of concern at present relates to the timing of the order for the second appointed day. We understand that at present there are no plans to change the proposed November handover, but there are many rumours circulating about possible delays emanating in many quarters from local authorities who are concerned at their ability to cope with the number of applications within the transitional period.

We understand that to date only 5% of all potential applicants have applied for conversion, with less than three months to go to 6 August when the ability to retain grandfather rights is lost.

An early announcement confirming the second appointed day is vital if all parties involved in licensing are able to plan effectively.

If there is to be any delay, then magistrates may be prepared to continue with their present jurisdiction, but any slippage into 2006 will require benches when they hold their Annual General Meetings, to elect a licensing committee. If these elections are not held, then there is no proper body left to conduct licensing hearings.

A further cause for concern, given the low number of 2003 Act applications, is the possible rush of appeal hearings in the autumn of 2005 and the courts' capacity to hear these promptly. We have mixed feelings about whether a delay in the second appointed day is an appropriate way to deal with such potential difficulties but would be happy to discuss the issues with you.

Neither the Association or Society wish to appear to be negative with licensing reform but we do wish to ensure a smooth transition and would ask for the earliest indication, certainly no later than 1 July, as to the date for the second appointed day. This notice is required to ensure that planning can take place, either to consider how to deal with a potentially large number of appeals between now and November, or to persuade our colleagues on licensing committees to continue their work into 2006.

Memorandum by the British Beer and Pub Association (BBPA) (RL 16)

The British Beer and Pub Association (BBPA) represents brewing companies and their pub interests, and pub owning companies, accounting for 98% of beer production and just over half of the 60,000 pubs in the UK.

Summary

1. The following short paper refers to delays in the system and lack of information provided in time. We believe solutions to the problems experienced are transparency and testing of the Regulations before their introduction. Given the problems experienced we would recommend that any future measures are fully tested, preferably using real-time exercises. We believe that a one to two day workshop session would have ironed out many of the problems that have been experienced.

2. Meetings of the DCMS Advisory Group should have been minuted to ensure the Committee's recommendations to Ministers were transparent and were seen to be dealt with accordingly. Whilst recognising the need for Chatham House discussions these could have been conducted in working groups.

3. More detailed observations are provided below:

Implementation of the Licensing Act 2003

4. The progress of the Act from July 2003 was dogged by periods of delay and sterility, accompanied by a refusal to re-visit the timetable when it was glaringly obvious that the necessary infrastructure was not in place early enough to move forward to the next stage.

5. It took a whole year for the Government to finalise the Guidance to the Act, which was acknowledged by both Houses of Parliament as being fundamental to an understanding of the Act, yet it was only published on 7 July 2004 when Councils were obliged to draft, consult and finalise their licensing policies in time for the 6 January deadline. (DCMS has since announced an urgent review of the guidance to be conducted only three months after the second appointed day.)

6. An Act of 201 clauses and Guidance of 178 pages takes some understanding. Add to this the fact that none of the secondary regulations had even been drafted never mind approved and there was a recipe for confusion right from the start.

7. As a consequence preparation time for local councils was limited as in many cases was the consultation time allowed. In many cases the lack of information meant that Councils could not release draft policies until September or October, thereby truncating the consultation process and time for consideration.

Licensing Policies

8. Councils were obliged to publish their licensing policies by 7 January 2005, before either the licensing regulations or the level of fees had been laid before Parliament. It is hardly surprising that some of these policies were, and still are, inaccurate and misleading. These problems are still working their way through the system.

9. Just as difficult for the trade was the task of reading and evaluating local policies. Lawyers were also engaged throughout the country on this task.

10. We found the level of knowledge of those preparing the policies to be extremely variable and stance and style even more so. Some policies were only a few pages long where others in excess of 100 pages were not uncommon.

Application Process

11. The application process in the transition phase ran to over 245 pages with copies of a 27 page form to be sent to the eight "responsible authorities" plus the Licensing Authority (nine in total). The number of pages is the same whether or not you want to change the licence in any way.

12. As a result of the Government's refusal to grant "grandfather rights" for the provision of live music under the "two-in-a-bar" rule and the loss of bank holiday extensions, many businesses had to fill in the 18 pages of the 27 page form that relates to "varying the licence".

13. The form is complicated and the process is complicated. Applications had to be delivered separately to eight different "responsible authorities" five of which are housed within the Council itself. How much easier it would have been, and how the Government were advised, to have a single drop-off point. Proof of delivery was also an issue. Just one recipient claiming not to have received a copy sent the whole process back to the beginning.

14. The Regulations were finally laid on 13 January to come into force on 7 February (the First Appointed Day), when the application process was to begin. Even at this stage the forms released on the DCMS website were incorrect and did not conform to the Regulations. Corrections were finally made to the forms which were re-issued on 7 February.

15. Without the forms, without the regulations relating to the plans required, without the advertising requirements and other similar details, it proved very difficult for businesses, or indeed Councils, to plan ahead. Those businesses that did try to do work in advance, particularly by preparing plans of premises, had to revise them to ensure that the 11 different requirements were met.

16. Despite guidance finally being given some Councils believed that all outside areas must be shown and at a scale of 1:100. What was the point of sheets of paper showing the golf course, the hotel gardens or the race-track? The confusion over plans was probably the single biggest issue holding up applications.

17. There was a severe lack of awareness of the new law among existing licence holders, particularly small independent businesses, largely due to a severe lack of information and publicity.

18. The regulations covering the fees only appeared just before applications could begin. These were complicated by the late entry of a fees escalator for larger premises that had the sale of alcohol as the primary purpose. By this definition night-clubs were excluded since the sale of alcohol was deemed not to be their primary purpose. By such a definition any venue with a late night Public Entertainment Licence could consider itself outside the escalator. Arguments have continued.

19. The due date for annual fees, which are required to be paid on the anniversary of the grant of the licence, provided no incentive for early applications.

20. The need for multiple copies of applications to the various responsible authorities under the Act greatly complicated the exercise. From our information little or no objections were received from Trading Standards (who were added by regulation at the insistence of Councils); Planning Departments or Child Protection Agencies. None of these were contained in the original draft of the Act and none of them have added value to the process.

21. The introduction of a "slip rule" in the Regulations would have allowed the correction of minor errors rather than applications being rejected. The rejection of applications obviously had significant cost implications for applicants who had to re-advertise;[5]

22. The presence of a slip rule would also have enabled Councils to exercise sensible discretion on a sound basis across all applications where administrative errors occurred. Such errors were inevitable given the complexity of the process and provision should have been made to deal with them. Many Councils handled these problems sympathetically but in the end were bound by the lack of flexibility in the regulations.

23. Alterations to licences after the first appointed day, particularly changes to the licensee and the implications for "grandfather rights", caused innumerable problems early in the process which were not resolved until guidance from DCMS was issued.

24. Lack of clarity around aspects of the existing law which were carried forward under the new Act (ie. embedded rights and restrictions) have caused much debate and confusion.

25. The large number of appeals that are going through the Courts are a result either of licensing authorities allowing conditions duplicating existing regulations (specifically provided against in the Guidance to the Act) or the imposition of unreasonable and unnecessary conditions.

[5] The DCMS Advisory Group set up to advise the Government on the development of the Bill recommended that advertisements should be by way of large A3 notices on the sides of premises. This was at the express advice of the local government representatives who agreed that newspaper adverts did not reach local people. In the interests of transparency industry agreed that more local people and therefore more potential objectors would be reached. The Government, however, decided to reduce the A3 notice (as described in the guidance) to a smaller A4 notice, every 50 metres with the addition of newspaper advertising. At a conservative estimate this has cost the industry an additional £10–£20 million given the cost of an advert between £100–£200. Advertising costs have now risen where £300 and up to £500 are not uncommon.

26. The BBPA estimates that the cost of obtaining a licence during this transitional phase at £1,830 per pub (£95 million across the pub sector), with a further £33 million to be expended in hearings and appeals).[6]

27. Concern in the trade is now growing that licences are not being issued by Councils even though granted. There is a very large back-log to be cleared with the implantation date only a few weeks away. It is very likely that a number of businesses will not have physically received their licences by 24 November.

28. Those licences that are being issued are often incorrect. Companies report that over 50% contain errors. Correcting these will add further cost burdens as well jeopardising commercial viability if enforcement is carried to the letter before these errors can be corrected.

29. Could these problems and delays have been avoided? Can lessons be learnt?

Timetable

30. We firmly believe that the Government could have and should have relaxed its timetable once it was apparent that it had slipped on its own timetable. The delay in the production of the Guidance was unacceptable. It should not have taken a whole year to pass Guidance on an Act. It appears that the delays were largely the responsibility of other Government Departments seeking to influence an Act of Parliament through the back door in the form of Guidance. This was a dis-service to all concerned.

31. Similarly, once the Government could see that the Regulations to the Act were not going to be released in sufficient time, the 1st Appointed Day should have been delayed. This was the recommendation from the Advisory Group and specifically supported by the LGA and ourselves and other trade bodies. Delaying the 1st Appointed Day would have had no discernable disadvantages and would most definitely have avoided many of the problems faced both by the trade and local authorities.

Memorandum from Councillor Audrey Lewis, Cabinet Member for Community Protection and Licensing, Westminster City Council (RL 17)

1. Introduction

1.1 Westminster City Council is probably the largest licensing authority in the country.

1.2 "Re-licensing" is not in common parlance in the licensing world—I take it to refer primarily to the process of converting liquor licences, public entertainment licences and night café licences in existence on 6 February 2005, into premises licences for the purposes of the new legislation and the associated variations.

1.3 This submission concentrates on the way in which the legislation has been implemented in practice, rather than upon the philosophy underlying the legislation. We cannot however deal with the practical problems that have arisen during the transition process without making some comments about aspects of the 2003 Act, and the Regulations made under the Act by the Secretary of State. It was the Act and the Regulations which set the ground rules for licensees, licensing authorities, and other stakeholders, and which contributed to many of the problems that have arisen.

2. Summary

2.1 Westminster, like other licensing authorities, was given an impossible job to do, without assurance of the resources necessary. The transition period of six months would have been far too short even if it had been properly planned. It was not properly planned. Regulations governing the application process were published far too late. The Regulations when published were unnecessarily prescriptive, too complicated for licensees, and badly thought out with respect to the post-application process.

2.2 There was little or no publicity given to the application process by government. Guidance issued by government to licensing authorities and licensees was confused, contradictory and unhelpful. Simple and obvious measures to simplify the process were resisted by government. Licensing authorities were not sufficiently involved in government decision making, or their views were ignored.

2.3 As a result of the late publication of the Regulations and other information, it was impossible for licensing authorities to plan properly. Westminster's plans for a "phased" receipt of applications were disrupted and had to be abandoned because of the late publication of Regulations.

2.4 In Westminster only about 85% of the premises entitled to "re-license" themselves did so. This was not a result of inaction, or a lack of guidance, from Westminster as licensing authority. It was a result of the problems referred to above. Westminster's experience is replicated in other licensing authorities.

2.5 Westminster was not able to determine all the applications for variation it received. Approximately 140 could not be determined within the period of two months allowed by the Act and accordingly were deemed to be refused. The volume of applications was such that it was necessary to devise a system of prioritising applications to be dealt with.

[6] Evidence presented to the DCMS Fees Panel 12 September 2005.

2.6 The tsunami of applications we received towards the end of the six month transition period would have overwhelmed any authority. In the event, and with the introduction of new staff, new processes, new IT, and new procedures, Westminster made the very best of the impossible situation in which it was placed. By the end of the transition period and thereafter, we were holding nine or 10 Licensing Sub-Committees a week, each dealing with up to 15 or 20 applications.

2.7 Because not all licensees submitted conversion applications in time, the "re-licensing" process is not yet over. There are now large numbers of new applications to deal with, as explained below. Moreover, the Council will be continuing to deal with appeals against Licensing Sub-Committee decisions for at least a further year. The ability of the Magistrates Court to deal with the volume of appeals efficiently, and the cost of those appeals are both matters of serious concern to us.

2.7.1 Both responsible authorities and interested parties have been adversely affected by predicted practical concerns governing the advertising of applications, the time allowed for representations or the hearing of the application where representations had been made.

3. The Role of DCMS

3.1 The introduction of the new licensing regime has been overseen by the Department for Culture Media and Sport. In this section we set out some of the criticisms we have to make of the way in which the transition process was over seen by that Department.

3.2 It should be said in fairness however that two of the most fundamental problems faced by licensing authorities (and by licensees) in the transition period arose from the terms of the primary legislation itself. The two provisions referred to are the provision contained in paragraph 2(2) of Schedule 8 to the Act, under which the period for making conversion applications was set as a period of six months and the provisions contained at paragraphs 4(4) and 7(3) of Schedule 8, under which conversion and variation applications were deemed to be granted or refused respectively if not determined within two months from receipt.

3.3 The six month period was an unnecessarily short period in our opinion. The effect of the deemed refusal provision in the case of variation applications, coupled with the obligation contained in regulations made by the Secretary of State not to adjourn any hearing beyond that date, was to impose a period for determination which was simply unnecessarily truncated. These provisions in combination severely limited the time available to Licensing Sub-Committees to consider and determine applications which were the subject of representations. That cannot have been in the interests of licensees or objectors.

3.4 We are critical of the regulations produced by DCMS, both with respect to the timing of their publication and their content. As to timing, the regulations were published in mid January 2005, only a few weeks before the commencement of the six month period on the 7 February 2005.

3.5 In consequence, for licensing authorities it meant that the procedures and processes which had to be put in to place could not be finalised before then. For licensees it meant that applications could not begin to be prepared before then.

3.6 Long before February 2005, Westminster anticipated that one danger it might face was that there would be a huge in rush at the beginning of the six month period. Therefore, Westminster engaged in an extensive and costly publicity campaign designed to make licensees aware of the provisions of the new legislation and to encourage them to submit applications in geographical "phases".

3.7 Instead of a deluge, no applications at all were submitted on 7 February 2005, because applicants were not in a position to provide the information which, they now knew, the regulations required. Applications began to come in, in a trickle some weeks after 7 February 2005 and the deluge was received at the end of the six month period. All this could have been avoided by proper planning from the Government.

3.8 There is not space in this submission to deal with all the criticisms we have of the way the regulations were drafted (in particular the regulations regarding the content and advertising of applications, and the regulations regarding the conduct of Licensing Sub-Committee hearings). We are happy to make available to the Committee the representations we made with respect to the regulations when they were in draft form. All our representations were apparently ignored. The consequences that we predicted duly occurred. In particular, many applications had to be invalidated because the requirements as to the content of an application are extremely prescriptive and cannot be waived. And the procedure for conducting a hearing before a Licensing Sub-Committee is simply unworkable in any major case where facts are in dispute. The short and detailed prescription of the periods during which representation had to be made by interested parties, such as residents, and responsible authorities, has seriously impeded the ability for mediation to take place which might have ironed out problems which will now lead to unnecessary appeals.

3.9 The prescriptive regulations covering the unspecific advertising of the application wholly in the hands of the applicant, supplemented by an A4 notice on the premises, has certainly led to insufficient notice being given to interested parties. Despite voluntarily supplementing this by writing to nearby residents and businesses and by notices on lampposts, the many initially invalid applications have led inevitably to occasions when the advice given has been wrong or misleading.

3.10 There is not space in this submission to set out all the steps taken by Westminster to publicise the new legislation and its implications for licensees and others. Central Government on the other hand appeared to take little or no action to prepare the trade for the transition period. I will give one example only to illustrate the point. DCMS announced that it intended to publish a newsletter, to raise the profile of the Act, help ensure a smooth transition to the new regime, and provide clarity on areas of concern. It was initially announced that the newsletter would be published monthly. Throughout the period of transition, when licensees, licensing authorities, responsible authorities and the public were desperate for information and guidance only two issues of the newsletter were published, in February and in May. Both were anodyne in the extreme and addressed none of the issues on which guidance was required.

3.11 When DCMS did issue Guidance, it was often bizarre and unhelpful. For example, when preparing for the transition period, all licensing authorities were extremely anxious to receive advice about so called "embedded conditions"—that is, the conditions that would need to be attached to new premises licences to reflect restrictions on their use imposed by previous legislation. DCMS refused to issue any such Guidance until May 2005, by which time many licences had already been issued. The Guidance issued in May expressly contradicted advice contained in the statutory Guidance (to which licensing authorities are required as a matter of law to have regard) issued by the Secretary of State in July 2004. Secondly, the Secretary of State has by letter dated 30 September 2005 now issued non statutory Guidance to licensing authorities which contradicts one of the main principles (that longer hours are inherently desirable) set out at length in the statutory Guidance. We welcome the latter, but it is not helpful for licensing authorities to have Guidance which is contradictory and the urgent resolution of this is necessary before Appeals are heard.

3.12 Furthermore, DCMS has been less than helpful in resolving practical problems licensing authorities have been confronted with. One has been the statutory restriction in Section 6 of the Act under which a Licensing Committee may not have more than fifteen members. This restricted the number of Licensing Sub-Committees Westminster could hold. Westminster is rated as an "excellent" authority by the audit commission, and as such we applied (initially to ODPM) for the lifting of this statutory restriction as part of the "freedoms and flexibilities" supposedly allowed to excellent authorities.

3.13 Our application was submitted to ODPM in November 2004. It was passed by ODPM to DCMS. We were informed by DCMS in January 2005 that it was being considered "urgently". The application remains undetermined one year after its submission.

3.14 Our view is that DCMS failed to properly involve individual licensing authorities in its consultation and decision making processes. Firstly, bodies representing the trade and trade interests were over represented on DCMS advisory bodies compared to bodies representing local government. Secondly, DCMS appeared to take little advice from those practitioners actually dealing with licence applications (at any rate, until the end of the transition period). The inevitable result was that problems which could and should have been foreseen, and which were foreseen by licensing authorities did not appear to be taken into account.

4. Some Statistics

4.1 There are some 3,100 licensed premises in the City of Westminster. 2,317 of them submitted a valid conversion application (with or without an accompanying variation application) on or before 6 August 2005, the final day of the six month period allowed by the legislation for a conversion application to be made. 40% of those applications were made in the final week of the six month period.

4.2 No application at all was received from 783 premises. We believe that approximately 185 of those are no longer trading. There were accordingly about 600 premises in Westminster which did not exercise the right to make a conversion application.

4.3 Those premises must make a new application, and that application must be granted, if they wish to trade lawfully from the Second Appointed Day, 24 November. As of today, 344 premises have still not made any application. Even if all those premises were to submit an application tomorrow, they could not be granted before 24 November. Many of those premises which have now submitted new applications did so too late for the application to be granted before 24 November.

4.4 Accordingly it is inevitable that hundreds of licensed premises in Westminster will either be forced to close on 24 November, or will operate unlawfully.

4.5 It is Westminster's view that this state of affairs is a direct and foreseeable consequence of decisions taken by government as to the implementation of the Act. It could and should have been avoided. It brings the licensing regime into disrepute.

4.6 Guidance from government as to the enforcement responsibilities of licensing authorities and the police with respect to premises unlicensed at 24 November has been promised but not yet delivered. Serious

problems will arise on and after 24 November for unlicensed premises, because without a valid licence they may be no longer covered by their insurance policy. That in turn gives rise to serious risk for the public. Westminster is urgently considering, with the assistance of the police and the Association of British Insurers, what guidance it can itself give to licensees in this position, and to visitors to licensed premises.

4.7 The West End is already suffering commercially, from the introduction of the congestion charge and from the events of 7/7. If doubts arise in the public mind about whether it is safe to visit licensed premises, it will come, before Christmas, at the worst possible time.

5. Appeals

5.1 The "re-licensing process" will not be concluded until appeals against licensing authority decisions are determined. For Westminster this is a serious issue. Approximately 30% of the applications for conversion we received during the transition period were accompanied by an application for variation. Some of these applications, as may have been predicted, involved a request for longer opening hours. But as was less widely predicted a number of other applications, often of a complicated and technical nature and designed to achieve the removal of existing statutory restrictions, were also made.

5.2 Many applications were granted in whole or in part. But more were refused. The majority of licensees whose applications have been refused have appealed, or are likely to appeal. We have already been notified of 150 appeals, and the total number of appeals that is likely to be made may amount to 600.

5.3 The first appeals were made in May and June 2005, and in late October only one appeal has been listed for hearing. None of the other appeals have even yet reached the stage of being offered a hearing date. We are concerned that the process of dealing with these appeals may drag on for up to a year or more. This is not a criticism of the Court, which does not appear to have been given additional resources to deal with this workload.

5.4 We are concerned about the potential cost to the Council as licensing authority of these appeals. The delay in their determination must be a matter of concern for licensees, who are unable to operate as they desire unless and until their appeal is heard and granted. The present position is therefore one which is extremely unsatisfactory.

6. Fees

6.1 We cannot discuss the transition period without commenting on the funding made available to us as licensing authority to deal with the responsibilities imposed on us under the new regime. The fees set by Government are manifestly insufficient to meet the costs of administering and in due course enforcing the new regime. We have been given an undertaking that fees will be reviewed. It is now clear that there will not even be any recommendations as to revised fee levels from the independent fees review panel until autumn 2006. There appear to be no proposals to compensate authorities for set up costs already incurred as a result the Council Tax payer is expected to subsidise a regime which exists for the advantage of the licensed trade.

7. Conclusion

7.1 In our view, there are a large number of lessons to be learned from the way in which the 2003 Act has been introduced. However, there are positive advantages to aspects of the Act such as the recognition of public nuisance as a matter which must be satisfactorily resolved and the introduction of Reviews which can allow the terms of a licence to be modified to resolve problems which are identified.

7.2 It is too late now to deal with the problems that occurred in converting licences between February and August 2005. At this stage, delaying the Second Appointed Day beyond 24 November would cause a new set of problems to arise.

7.3 It is not too late to address some of the problems that still exist, including those that arise from the terms of the regulations made under the Act.

7.4 The contradictions arising from the Guidance which have been addressed in the recent Ministerial letter need to be urgently addressed.

7.5 The proper funding of the regime still needs to be addressed.

7.6 Urgent attention needs to be given to the problem of premises which are unlicensed on 24 November 2005 and to the problems faced by the Magistrates in dealing with appeals.

7.7 Government should ensure that the same mistakes are not made in the course of the implementation of the Gambling Act 2005.

Memorandum by David Bieda, Meard & Dean Street Residents' Association (RL 18)

RIGHTS OF PARTIES TO APPEAR BEFORE THE MAGISTRATES ON APPEAL

Amongst the plethora of issue thrown up by the above is the issue of whether those making representations before the licensing authority are entitled to then appear for themselves when there is an appeal to the magistrate's court.

This is a rather key issue since at present it appears that if residents (or others) have made representations and there is then an appeal we do not have the right to appear when the case is heard de novo. Of course the licensing authority would be represented since it would be the defendant to the appeal. Thus if a member of your Committee were to object, the licensing authority to then not grant the application and an appeal was then made the member of your Committee would not have the right to appear before the magistrates.

The same applied to the police if they made representations.

We and the Soho Society have raised this with our local court and on 26 October we have an application for a third party Joinder. This may be the first of its kind under the new Act.

I will fax you the relevant papers and also forward some related emails. We feel that this raises important HR issues, and that it is unsatisfactory since the magistrates are not carrying out a review but hearing cases de novo.

In the papers I am faxing you which relate to an application for a 3 am licence which was refused, the resident who made representations will not have the right to appear for herself. Of course the licensing authority might call her as a witness, but her interests may not be the same as theirs.

ABILITY OF THE POLICE TO RAISE ISSUES BEFORE THE LICENSING AUTHORITY IF THEY HAVE NOT MADE REPRESENTATIONS

We have also been involved in a hearing where AFTER the date for close of representations the MPS became aware of possible serious criminal matters relating the licensees, who indeed were unable to attend the hearing as they were "under investigation". In such cases the police cannot bring these matters to the hearing, and they thus cannot be taken account of. This does seem unsatisfactory and would not apply under the old regime.

These may be matters which your Committee will wish to be aware of since obviously they apply throughout England.

The following appendices are available from the Committee Office:

Appendix A

Letter to the Lord Chancellors Dept on the rights of those making representations before magistrates dated 6 September 2005.

Appendix B

Letter to Horseferry Magistrates' Court re: Candy Bar, London, dated 24 October 2005.

Memorandum from Earley Town Council (RL 19)

Earley Town Council would like to make one observation only. The Council is of the view that the removal of Town and Parish Councils from the statutory list of consultees has been a mistake. The Council finds it very difficult to make responses concerning proposed licensing applications. Fortunately, our District Council does provide information on applications received. However, no further details is forthcoming, it has to be requested each time from the District.

While appreciating the new process for licensing does speed up the rate at which applications can be considered and approved, it does, on the other hand, make it more difficult for objections to be lodged and for local councils to obtain a proper hearing of their points of view.

20 October 2005

Memorandum from the Office of the Deputy Prime Minister and the Department for Culture, Media and Sport (RL 20)

EXECUTIVE SUMMARY

1. This memorandum describes the transition process which allowed existing licence holders to convert to the new licences required under the Licensing Act 2003 (the 2003 Act) and what can be drawn from the experience of implementation. In preparing this memorandum, ODPM has worked with the Department of Culture, Media and Sport (DCMS) to prepare a joint response.

2. The 2003 Act marks the end of the six existing outdated licensing regimes which needed reform by integrating them into a single, more efficient and effective system of licensing that meets the needs of a vibrant, modern society and is fit for purpose. It also provides a balanced package of freedoms and safeguards, protecting the rights of business, individuals and communities while clarifying their responsibilities.

Licensing Act 2003

3. The 2003 Act requires each licensing authority to carry out its licensing functions with a view to promoting four statutory licensing objectives. These are:

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

4. The modernisation of the legislation also supports our wider aims to introduce more proportionate and effective regulation, greater choice for consumers, encouragement of family friendly premises and further development of the richness and diversity of live music, dancing and theatre, regeneration and protect residents from anti-social behaviour and nuisance.

5. The key measures contained in the Act include:

- Flexible opening hours for premises, which will help to minimise public disorder resulting from fixed closing times;
- A single premises licence will bring together six existing licensing regimes (alcohol, public entertainment, cinemas, theatres, late night refreshment house and night cafés) thereby cutting down on red tape;
- Premises licences to be issued by the licensing authority after notification to and scrutiny by the police and other responsible authorities;
- Personal licences to be issued by licensing authorities after scrutiny by the police where the applicant has been convicted of certain offences.

6. Section 182 of the Licensing Act 2003 provides that the Secretary of State must issue, and may from time to time revise, guidance to licensing authorities on the discharge of their functions under the 2003 Act.

7. Guidance under this section was issued in July 2004 and was prepared in consultation with an advisory group including a wide range of organisations, agencies and Government Departments, and took into account the views of over 650 other organisations, residents' associations, businesses and public bodies that contacted the Government about licensing reform and the Guidance.

8. The Guidance will be kept under constant review in consultation with the key stakeholder groups and will be amended or supplemented as necessary at any time to address issues arising from implementation affecting local communities, licensing committees, the police, applicants for licences and club premises certificates, those giving temporary events notices and performances. We have agreed that the first review of the guidance will begin in November 2005 to reflect lessons learnt in the licensing process.

Transitional Period "Re-Licensing" Process

9. The term "transitional period" refers to the period between the first appointed day (1AD) and the second appointed day (2AD). The 2003 Act requires a period of at least six months between the issue of Section 182 Guidance and 1AD. However, in the event the Government set a seven-month period by naming 7 February as 1AD. This was to accommodate the views of the industry and local authorities that 1AD should not directly follow the Christmas period and that applicants should have some time to consider their licensing authority's policy statement that had to be published by January.

10. It was recognised that the transitional period would be a difficult and demanding time for licensing authorities, responsible authorities and applicants in dealing with the anticipated 190,000 applications—made up of 180,000 existing premises license holders and 10,000 new applicants. This is made up of not only pubs (60,000) and clubs (1,800) but 46,600 off license premises and about 20,000 registered members clubs. In addition, around 200,000 individuals were expected to convert to obtain personal licences or apply for new ones.

11. Existing licence holders had from 1AD to 6 August to exercise their right to apply to convert their existing licences ("grandfather rights") to new premises licences or certificates.

12. Prior to 1AD, some stakeholder were concerned that licensing authorities would be deluged by an immediate rush of applications. In practice, however, there was an extremely slow start to applications being received after 1AD. By May, only 3% of expected applications had been received. The rate of applications started to pick up over the summer following action both on a local level by local authorities, police and others and through activity at a national level by the Government in partnership with trade and local

authority organisations. A significant peak of activity by applicants to secure Grandfather rights in the last few weeks before 6 August led to around 75% of applications being submitted by this date. Indications are that around 98% of expected applications are now in.

13. Of those anticipated applications outstanding, the Government's discussions with local authorities suggest some are because businesses are adjusting their business practices to remove the need for a licence and others who are planning to use temporary entertainment notices, at least in the short term. Many licensing authorities are now using their intelligence of the local licensing market to follow up on a case by case basis those premises they anticipated needing a licence who have not yet applied.

14. Feedback for local authorities and trade groups suggest that the main affected sectors are now at virtually 100%—this includes pubs, bars, nightclubs, registered members' clubs, supermarkets, theatres and cinemas. A targeted effort has been made by the Government, with trade and partner support, to target at risk groups. These groups include night cafés and takeaways, small stores and restaurants and other independent businesses generally. We believe that the majority of village halls and sports clubs that want a licence have applied, although village halls in particular will have a number that wish to rely on temporary event provisions, rather than obtain a full licence. The Government is confident that the vast majority of those who need a licence on 24 November have applied in time.

15. The transitional period will end on the second appointed day which, subject to Parliamentary approval, is scheduled for 24 November 2005. From this point, new premises licences and club premises certificates take effect and new powers come into play which will enable the licensing system to start delivering on its objectives.

16. Both the Local Government Association and the Association of Chief Police Officer want to ensure there is no delay in the second appointed day, a view shared by organisations representing the on and off licence trade, sports clubs and village halls. Delaying full implementation of the 2003 Act would require new applications for temporary permissions and licences to cover the Christmas period and additional expense for applicants and local authorities, undermining the efforts of local government, councillors, police, business and communities and applicants who have worked together to get the system in place.

17. The emerging trends from applications for the new system show that the Licensing Act is achieving the objective of creating a more flexible system of opening hours:

— about 40% of applications (74,000) are to vary existing licences, not just opening hours but increases in premises offering food later into the evening, or public entertainment for example.

— Very few premises have applied for 24-hour licences, and only a few have been granted, mainly for supermarkets and off licences. Licensing authorities are reporting a genuine variation in licensing hours as opposed to a general shift to later opening.

— In addition a small number of premises have had their licence to simply convert what they have now revoked on application on the advice of the police, an example of how the Licensing Act is providing greater protection in extreme cases to close licensed premises.

18. It is also showing that communities and authorities are engaging in the process. Local authorities tells us that, of the applications to vary licences around half have attracted representations from "responsible authorities" or "interested parties", with residents accounting for 50% of representations. In two-thirds of cases representations have been resolved through mediation avoiding the need for hearings, suggesting a flexibility among applicants, authorities and interested parties to work out solutions together.

19. However, where cases are being taken to hearings, local authorities report that licensing committees are responding to residents' concerns by adding conditions or adjusting hours in 95% of cases.

20. In general, licensing authorities report that they are coping with the current workload of representations and hearings. Although it is recognised that this is as a result of sustained effort and hard work over the last four months.

21. In summary, the transition to the new system heralds a new era where a streamlined and effective licensing system can respond to policing and community concerns but also give more flexibility to businesses and choice to consumers. However, as is inevitable in such transformational reform some specific technical and unanticipated issues have arisen including:

— Golf clubs: DCMS have reassured them on several issues. However, concerns remain over the fairness of the fees regime and the interpretation by some local authorities of some of the requirements of the Act (such as plans of premises).

— Amateur Sports Clubs: believe the increase in fees to have an alcohol licence is unfair and will threaten grassroots sport.

— Parish Councils: some feel they are not being given sufficient say over licensing decisions. This will often come down to interpretation as to whether a Parish Council is an organisation that represents interested parties.

— Village Halls: some Halls do not feel that having a full premises licence to sell alcohol is appropriate to them, but are concerned that the limits on the light touch regime for temporary events is too restrictive in the number of events that can be held.

— Touring circuses: concerns that, as they need a licence for each site, this could mean they need to apply for 40+ licences. They believe this threatens the viability of all but the biggest circuses and is unfair as static attractions have to obtain only one licence.

Listening and Learning Lessons

22. That is why the Government put in place mechanisms for monitoring and reviewing the process. Measures to learn lessons from the transitional period and the implementation of the Licensing Act 2003 include:

— A High Level Group to monitor implementation and review the impact of the Act;

— An Independent Fees Review Panel, chaired by Sir Les Elton, to ensure the fees are set at the right level for local government and licensees;

— A transition feedback form for local authorities to report how licensing reforms are progressing during the busy transition period;

— An agreement to review and update Guidance as necessary; and

— Independent research to establish live music activity in England and Wales prior to and following the implementation of the Act.

— An evaluation of the crime and disorder aspects of the 2003 Act by the Home Office.

High Level Group (HLG)

23. The Government has worked with a high level group of stakeholders to cut across traditional boundaries and share information and knowledge openly to ensure a transparent transitional process.

24. The HLG is chaired by James Purnell, the DCMS Minister for Licensing and includes representation from the licensed trade organisations, community organisations, local government, the police and other Government departments.

25. This group met throughout the transitional period and shared information on the process to ensure early warning of potential issues and the opportunity to resolve problems quickly. The HLG has helped developed a partnership of parties that are all committed to successful operation of the Licensing Act 2003. It will continue to meet after the second appointed day and will help monitor the on-going implications of the Act.

Independent Fees Review Panel

26. The Government has worked with local government prior to the introduction of the 2003 Act to plan for the introduction of the licensing scheme. The application fee levels take account of consultation with local authorities during 2003 and meetings with local authorities and the Local Government Association to take into account anticipated costs.

27. We believe that from the information available at the time, the fee regime was set at a level sufficient to fund administration, inspection and enforcement costs associated with the discharge of local authority functions under the 2003 Licensing Act.

28. The Government remain committed to a regime that is self-funding and agreed to ensure from the outset that the fees are set at the right level for all stakeholders affected by the new legislation. There remain different predictions as to the implications of the Act and wide variations in the expected costs.

29. Therefore, the Government have established an Independent Panel, chaired by Sir Les Elton, to review the licensing fee, income and expenditure incurred during the transition period. The panel is due to provide an early report later this year before completing its full independent review in the autumn of 2006. The Government will then wish to review the fee regime in light of the findings of the Independent Panel.

Transitional Period Feedback

30. In addition to the licensing fee review and to help ensure swift action if any licensing authority finds itself under exceptional pressure DCMS has:

— included a feedback form on their website (www.culture.gov.uk) which any licensing authority can use to send quantitative and qualitative information about the implementation of the Act during the transitional period;

— used this information to supplement normal communications and discussions with LACORS and in the high level group; and

— Sought to use these mechanisms to identify any particular authorities experiencing exceptional difficulties and pressures in discussion with LACORS and the LGA.

31. The new licensing regime will be easier and more efficient as six licences will become one. All decisions will be taken by licensing authorities who are democratically accountable. For years alcohol licence fees have not been reflecting the true costs and taxpayers have effectively been subsidising all those who hold licences or certificates for the sale or supply of alcohol (estimated to be to worth about £25 million a year). This will not be the case under the new system.

Review of Guidance

32. As mentioned above the statutory guidance to the Licensing Act included a commitment to keep guidance under review in consultation with stakeholders. In discussion with the Local Government Association it has been agreed to begin a review of the guidance in November 2005 to allow for early lessons from the implementation process to be incorporated into the guidance.

Monitoring the impact of the 2003 Act

33. A range of studies are planned or under-way to evaluate the impact of Licensing Act. This will include the impact on particular sectors, such as village halls. As part of the process the first baseline study of live music in England and Wales has been undertaken, which will allow the impact of the Act on live music to be considered when fully operational in 2006.

34. The Home Office will be evaluating the impact of the changes brought about by the Licensing Act on levels of crime and disorder. A range of measures will be used to assess the impact of the new Act at both a national and local level. These include national surveys, which aim to assess change in levels of alcohol related victimisation and offending. These will be supplemented by case studies involving five towns and cities in England. The local case studies will look at patterns of recorded crime and disorder in relation to licensed premises and extended hours, and where possible, accident and emergency and ambulance service will also be assessed. Information will also be collected from surveys among local residents as well as qualitative interviews with representatives from the local authorities and the police, and from a range of local businesses, including licensees

Promotion of Good Practice and Innovation

35. The transition process introduced new opportunities for residents, local authorities and the police and encouraged business to adopt good practice in premises management. The Government remains committed to ensuring that these tools are widely promoted and adopted to ensure their effective and strategic use. Ministers are undertaking a regional tour to cover a range of licensing and tourism related issues.

36. The Government plans to build on these powers through the Violent Crime Reduction Bill currently before Parliament through Alcohol Disorder Zones, Drinking Banning Orders, 48-hour closure powers for premises persistently selling alcohol to underage drinkers, directions to leave a locality for up to 48-hours and expedited review of alcohol licenses where premises are associated with serious crime and disorder.

37. Through our Cleaner, Safer, Greener Communities *How to Manage Town Centres* programme, Alcohol Misuse Enforcement Campaigns and the work of the Live Music Forum, we will be working with practitioners at all levels to ensure awareness, action and outcomes arising from these new tools.

Forward Look

38. Our primary aim is to ensure the Licensing Act 2003 delivers its objectives—prevention of crime and disorder; public safety; the prevention of public nuisance; the protection of children from harm.

39. The Licensing Act is addressing current challenges, not creating them. Crime and disorder is fuelled by alcohol at present, with around half of violent crime being linked to alcohol and one in five violent incidents occurring in the vicinity of pubs and clubs each week. The new powers for the police and others will strengthen the ability of responsible authorities to act quickly against poorly managed premises which contribute to these statistics.

40. The previous inflexible licensing laws contributed to this. The four licensing objectives of the new system were developed after extensive and detailed consultation and a lengthy review of the existing law conducted between 1998 and 2001.

41. The Licensing Act will not, on its own, prevent crime and disorder, public nuisance, promote public safety, or protect children from harm. However it has potential for becoming a vital part of the solutions.

42. Licensing authorities will prepare and publish a licensing policy statement every three years, setting out how the authority intends to exercise its licensing functions and must itself be prepared with a view to promoting the licensing objectives. The lessons learnt over the last year will help develop influence over the market and drive co-ordination of policies on crime and disorder, transport and town centre management.

43. In conclusion, local government, the police, residents and the licensed trade have successfully responded to the challenge of converting to the new system, which will allow the introduction of a streamlined and effective licensing system that is fit for purpose in a modern and vibrant economy.

Supplementary memorandum from the Office of the Deputy Prime Minister and the Department for Culture, Media and Sport (RL 20(a))

LICENSING ACT 2003—SUMMARY AND KEY FACTS—PREPARED BY THE DEPARTMENT FOR CULTURE, MEDIA AND SPORT

The Licensing Act 2003 Transitional Period

— The transitional period began on 7 February 2005. From this date, licensing authorities began processing applications for premises licences and club premises certificates.

— Existing licence holders had until 6 August to exercise their right to apply to convert their existing licences ("grandfather rights") to new premises licences or certificates.

— The transitional period ends on 24 November 2005 (subject to Parliamentary approval). From this date, new premises licences and club premises certificates take effect.

Anticipated Applications During Transition

— The Government anticipated 190,000 applications would be submitted during the transitional period made up of:

180,000 existing licence holders

10,000 new licence holders

— For counting purposes, the Government has used figure of 200,000 when determining application rates over the transitional period.

Application Rates—at 6 August

— Estimated total of conversion applications submitted was 135,000 (75%). This indicated that around 45,000 suggested that some premises chose to apply for new licences rather than convert existing restrictive licences.

— Estimated total of new applications received very low. 1–3% maximum.

— The Government conducted a significant and thorough communications effort to targeted existing licence holders to apply.

Application Rates—at 14 October

— Total applications submitted now at around 95% (c 190,000 applications)

— Evidence suggests that some existing licence holders will choose not to apply for a new licence, and adjust their business practice.

— Most authorities are gathering intelligence on whether outstanding premises intend or need to secure a new licence. We suspect that the number who want a licence, but haven't yet applied is very low (maximum 2%).

— Authorities are using this intelligence to proactively pursue outstanding applications on an individual basis.

Transitional Period Trends

— Around 40% (74,000) of applications are to vary their existing licences. But not just opening hours—some wanting to offer food later, public entertainment, or removal of existing conditions that are no longer relevant.

— Very few 24-hour licences have been applied for, or granted (of the few being granted, most are for supermarkets and off licences). Licensing authorities report there is genuine variation in licensing hours rather than a shift to single later terminal hour.

— A small number of licence conversions have been revoked by licensing authorities on the advice of the police. However, this is not widespread, is limited to extreme cases and subject to on-going appeals.

REPRESENTATIONS

— Around 50% of applications to vary (37,000) are attracting representations from either "responsible authorities" (police, environmental heath, health and safety) or "interested parties" (local residents and businesses).

Breakdown of these representations as follows:

— About 50% from residents

— About 25% from the police

— About 20% from environmental health

RESOLUTION METHODS

— Successful use of mediation to avoid hearings in about two thirds of cases (24,400). (NB residents' complaints slightly less easy to resolve this way)

— Local Authorities tell us that in over 95% of cases, Licensing Committees are responding to residents' concerns at hearings by adding conditions and/or adjusting hours

— So far few applications going to appeal, though too early in process to have accurate picture on this

DATA WE DO NOT HAVE

— Number of late licenses granted so far. This is because it is too early in the process to get any meaningful figures as applications are all at different stages.

— Number of applications to vary that are being "accepted". This is because the system works on the basis of negotiation and compromise.

— Number of "unlicensed" premises. This is because some businesses will no longer want or need a new licence.

PREMISE LICENCE APPLICATIONS AS AT 6 AUGUST—SECTOR ANALYSIS

Sector	*Est No of premises*	*Uptake by 6 August*	*Impact if no licence*
Overall position	200,000	150,000	Varies according to sector.
1. Pubs, night clubs and bars (chains)	40,000	Over 39,500 (99%)	Closure unless events held under Temporary Events Notices (TENs).
2. Pubs and bars (independent)	20,000	Approx 15,000 (75%)	Closure unless events held under TENs.
3. Supermarkets	8,000	Over 7,900 (99%)	No sale of alcohol, but still open.
4. Members clubs	20,000	Over 15,000 (75%)	Significant curtailing of activity (alcohol and entertainment). Some events possible under TENS.
5. Convenience stores/off licences	36,000	Approx 22,000 (60%)	No sale of alcohol, but still open.
6. Licensed Restaurants	23,000	Approx 14,000 (60%)	Limit activities—no alcohol of sale with meals. Some events possible under TENS.
7. Late night takeaways	20,000	Cautious estimate 10,000 (50%)	Limit activities—closure at 11.00 pm
8. Hotels	7,000	At least 5,600 (80%)	Limit activities—close bars. No hot food after 11.00 pm. Poss Some events under TENS.
9. Guest houses	Est 10,000	Approx 5,000 (50%)	Limit activities—close bars. Poss Some events under TENS.
10. Cinemas	600	Over 590 (99%)	Closure
11. Theatres and the wider arts	Est 2,000	Approx 1,000 (50%)	Closure for theatres. Limitation of activities for others.
12. Village and community halls	Est 15,000 who will apply.	Approx 11,000 (70%)	Limit activities or operate operating under TENs.
13. Boats	600	No need to apply by 6 August.	Limit activities operating under TENs.
14. Circuses	40	No need to apply for 6 August.	Limit activities—no acrobatics, music entertainment, possibly clowns.

Supplementary memorandum by the Office of the Deputy Prime Minister and the Department for Culture, Media and Sport (DCMS) (RL 20(b))

RE-LICENSING: HEARING ON 31 OCTOBER 2005

At the Committee's hearing on the subject of Re-Licensing, the Chair indicated that it may be helpful for us to confirm in writing the position regarding the right of any local councillor or Member of Parliament to make representations on behalf of constituents under the provisions of the Licensing Act 2003.

The Government's position on this issue has not changed since the Licensing Bill was first introduced to Parliament in November 2002. The Bill was amended by the House of Lords so that Members of the European Parliament, Members of Parliament and the local ward councillors for the constituency or ward in which the premises are situated were included specifically as "interested parties". An interested party is a person or body that has the right to make representations when an application for the grant or variation of a premises licence or club premises certificate is made; and has the right to apply to the licensing authority for a review of the licence or certificate. The Government reversed this Amendment at Committee Stage in the House of Commons because it was unnecessary and inappropriate. I refer you to the Committee's debate on the Government Amendment which restored the original position[1]. You will note that members of the Committee from the opposition parties generally supported the change. The House of Lords later itself accepted the amendment made by the House of Commons.

In the light of the position initially adopted by the House of Lords, the Government decided to make the position clear in the Guidance under section 182 of the 2003 Act, which was approved by both Houses of Parliament and formally issued in July 2004, some six months before licensing authorities were required to publish their own statements of licensing policy and some seven months before the start of the transitional period. All licensing authorities are required to have regard to the statutory Guidance and their own statements of licensing policy when carrying out their licensing functions.

Members of Parliament and local councillors who themselves live in the vicinity of premises applying for the grant or variation of a premises licence or club premises certificate can obviously make representations to the licensing authority in their own right as interested parties. They can also apply for a review of the licence at any time. However, paragraph 5.32 of the Guidance approved by Parliament makes it clear that interested parties (for example, a person living in the vicinity of a premises or a body representing persons living in the vicinity) can specifically request a representative such as a Member of Parliament or a local ward councillor to make a representation on their behalf. In the case of a ward councillor, it would be expected that any councillor who is also a member of the licensing committee and who is making a representation on behalf of the interested party would disqualify themselves from any involvement in the decision making process affecting the premises in question.

The position, as explained by Dr Howells during the BillØs Parliamentary stages, is that there is nothing in the 2003 Act which prevents any person, solicitor, friend or elected representative (a local councillor, MEP, MP or Member of the National Assembly for Wales) acting on behalf of an "interested party". There is therefore nothing which actively prevents any MP or local councillor representing a constituent that lives in the vicinity of the premises either by making written representations on their behalf, applying for a review or by speaking on their behalf at a hearing. What an elected representative, who does not live in the vicinity of the premises his—or herself, cannot do is to make representations on his or her own behalf. This position was endorsed by the whole Committee scrutinising the Bill.

However, despite the position explained during the Parliamentary stages of the Bill and in the Guidance, the issue has continued to raise its head and has been mentioned several times on the floor of the House. For this reason, the Secretary of State for Culture, Media and Sport wrote on 30 September this year to licensing authorities reiterating that there is nothing to prevent a local councillor from making representations if asked to by residents, nor from seeking the views of their residents on licensing matters as they would for any other issues.

We are aware that part of the confusion has arisen in connection with rules in the Code of Conduct for members which govern disclosure of interests and withdrawal from meetings where members have relevant interests, rather than with the Licensing Act 2003 itself.

The background is that every authority is required to adopt a code of conduct that sets out rules governing the behaviour of its members. Each code must include the provisions of the Model Code of Conduct approved by Parliament in November 2001. Authorities can choose to add their own local rules to the Model Code if they wish, although most have adopted it without additions.

The Standards Board for England is responsible for policing the Code of Conduct for members, and for publishing guidance on its operation. Last year, Nick Raynsford invited the Standards Board to undertake a review of the Code, and to consider lessons learnt over the three years of the operation of the Code. It is essential for members to be able to understand fully what is expected of them by the local conduct regime,

[7] Licensing Bill [Lords] in Standing Committee D, 6th sitting 10 April 2003 (morning) , Col 224–229 http://www.publications.parliament.uk/pa/cm200203/cmstand/d/st030410/am/30410s06.htm

including the code of conduct, and for the code to reflect the way modern councils work. The Board received over 1,200 responses to its consultation, and many of these commented on the need for changes to the rules relating to personal and prejudicial interests.

As we explained to the Committee on 31 October, the Office of the Deputy Prime Minister is currently undertaking a review of the local government conduct regime as a whole This includes consideration of recommendations for changes to the Model Code of Conduct made by the Standards Board following its review, as well as the Committee's own recommendations following its Inquiry into the Role and Effectiveness of the Standards Board and recommendations on the local ethical framework in the Graham Committee's 10th report. We plan to announce our conclusions on the way forward in the next few weeks. In addition, we indicated to you at the hearing that we would be happy to consider any recommendations that the Committee bring forward.

We also intend to review the Guidance issued under section 182 of the 2003 Act from 24 November and if we can make the existing advice clearer, we will attempt to do so.

Phil Woolas MP
ODPM

James Purnell MP
DCMS

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