

## **Memorandum submitted by the British Beer and Pub Association**

- The pub sector plays a crucial role in welcoming and providing excellent services and facilities not only to their local communities but also to visitors within the UK and from overseas. The recent changes to the licensing laws have given licensees the opportunity to further adapt their offering to meet the needs of their customers.
- Increases in regulation and associated costs in recent years, including the smoking ban and duty increases, have damaged the licensed trade and have left many pubs unable to withstand the current economic pressures.
- The Licensing Act 2003 has generally had a positive effect in terms of addressing public nuisance issues where they arise. There is no evidence to suggest that the Act itself has contributed to any increase in public nuisance.
- There is no evidence that the Licensing Act 2003 has led to any significant increase in the overall number of night-time offences.
- There has not been any increase in the provision of live music as a result of the Act
- Recommended changes to the Act and the Licensing process include:
  - Removal of the Triennial review of Licensing Policies
  - Simplification of the application process
  - Implementation of the minor variation process as soon as possible
  - Extension of the Interim Authority notice period
  - Introduction of a Slip Rule for Local Authorities
- The Licensing Act, 2003 imposed greater costs than originally anticipated.
- The proposals in the recent Government consultation *Safe Sensible Social* have the potential to undermine the operation and intention of the Licensing Act, 2003 and could impose greater burdens on businesses.

## **1. INTRODUCTION**

- 1.1 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 58,200 pubs in the UK. The pub sector contributes over £22 billion to the economy and employs in the region of 600,000 people. Over 80% of pubs (i.e. nearly 50,000 outlets) are small businesses which are independently managed or run by self-employed licensees. The provision of food has become increasingly important to pub businesses over the last decade, and the pub food market is currently estimated to be worth in the region of £6 billion per annum.

### **Economic Overview**

- 1.2 Increases in regulation and associated costs in recent years, including the smoking ban and duty increases, have damaged the licensed trade and have left many pubs unable to withstand the current economic pressures. On 5<sup>th</sup> March 2008, the BBPA released figures on pub closures, which have increased sharply over the last two years. 1,409 pubs closed in 2007 compared with 216 in 2006 and 102 in 2005. Figures released on 8<sup>th</sup> September confirmed that the closure rate is increasing, with 36 pubs per week now being lost compared to 27 pubs per week back in March. The current closure rate is 33 per cent up on 2007. Pubs are now closing nine times faster than in 2006, and 18 times faster than in 2005, as illustrated in the BBPA economic report attached at Annex 1<sup>1</sup>.
- 1.3 As explained above, the vast majority of pubs are small businesses, and they have faced much new legislation over the last three years. In addition to the change to a new licensing regime, there are also new gambling laws, and the ban in smoking in public places. As pubs are already highly regulated businesses, absorbing the cost and social impact of new legal provisions, together with the downturn in the economy as a whole, is now taking its toll. Urban pubs have been hardest hit to date, with two per cent of all urban pubs closing in the last six months. Pubs without the space to provide an attractive outside area for smokers, and those that are not heavily focused on food sales have faced particular difficulties. At this rate of closure, many villages across Britain may lose their pub in the next few years, and thousands of local jobs would also be lost. Total alcohol sales in pubs have fallen by around 6 per cent in the last 12 to 18 months. While there has been some increase in food sales, profit margins are being squeezed because of the additional costs associated with selling food.
- 1.4 The “The Pub Under Pressure” chart, which illustrates the extent of regulatory pressure on the pub sector, is contained in Annex 1.

### **The Licensing Act 2003**

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<sup>1</sup> A Wake for Westminster – Economic Trends in the Beer and Pub Sector (BBPA, September 2008)

- 1.5 The pub sector plays a crucial role in welcoming and providing excellent services and facilities not only to their local communities but also to visitors within the UK and from overseas. The recent changes to the licensing laws have given licensees the opportunity to further adapt their offering to meet the needs of their customers. We are concerned, however, that the negative publicity surrounding the introduction of the new licensing laws has damaged the image of the pub sector with Government, to the extent that it is no longer perceived to be part of the hospitality and tourism sectors, but purely about the sale of alcohol. This is not the case, and it is important that the balance is redressed. As the sponsor department for tourism and hospitality, we believe that DCMS has an important role to play in promoting the positive aspects of pubs as an important part of our national heritage and tourism industry.
- 1.6 The BBPA believes that the implementation of the Licensing Act 2003 has been successful to date and is encouraged by reports of decreased levels of disorder associated with licensed premises. The first chapter of the current Government consultation on *Safe, Sensible, Social* states that “*Alcohol-related violent crime fell by a third, from about 1.5 million incidents in 1997 to fewer than 1 million in 2007/08*”<sup>2</sup>. Welsh police reported that “the Act may have been more generous with licensing hours, but its also far more proactive in tackling premises which are causing problems.”<sup>3</sup> Councils have also embraced the Act, the leader of Manchester City Council states in the foreword to their licensing policy ‘that the greater freedom and flexibilities offered by the new licensing regime placed tremendous responsibility on the operators of licensed premises...I am pleased that for the vast majority of premises this is indeed the case...right across Manchester’.<sup>4</sup>
- 1.7 The intention of the Act was to allow flexibility of operation for licensed premises, and not “24 hour drinking”, as widely but erroneously reported by the media. Three years on from the implementation of the Act, most pubs are only open, on average, 21 minutes longer than before the changes to the licensing laws.<sup>5</sup>
- 1.8 The Association welcomes this opportunity to provide comments below as part of this inquiry. We firmly believe that the Act is making a positive contribution to the management and control of licensed premises. DCMS (in its 2008 evaluation of the Act) makes the point that ‘assessing the impact...will require time’ and that ‘several studies (have) concluded that the impact of licensing cannot be considered independently of other factors’<sup>6</sup>.
- 1.9 We would also draw the Committee’s attention to the low number of licence reviews that have taken place since the introduction of the new Licensing Act. There were 666 licence reviews recorded by DCMS between 2006 and 2007, of which 91 licences were suspended and another

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<sup>2</sup> Crime in England and Wales 2007/08, Home Office Statistical Bulletin

<sup>3</sup> ‘Welsh police praise Licensing Act’ (Morning Advertiser, November 2007)

<sup>4</sup> Manchester City Council Licensing Policy 2008-2011

<sup>5</sup> CGA Strategy poll of licensed premises (for DCMS, March 2008)

<sup>6</sup> Evaluation of the impact of the Licensing Act 2003 (DCMS, March 2008)

91 revoked.<sup>7</sup> This is a small fraction of the 176,400 licences in force at the time. There has, therefore, been no need to take large numbers of licensed premises to review.

## **2. THE SPECIFIC QUESTIONS RAISED BY THE CULTURE, MEDIA AND SPORT COMMITTEE**

2.1 Our observations on the key questions for this Inquiry are as follows:

**WHETHER THERE HAS BEEN ANY CHANGE IN LEVELS OF PUBLIC NUISANCE, NUMBERS OF NIGHT-TIME OFFENCES OR PERCEPTIONS OF PUBLIC SAFETY SINCE THE ACT CAME INTO FORCE;**

### **Public nuisance**

- 2.2 The prevention of public nuisance is, of course, one of the four licensing objectives, and is, in our experience, primarily concerned with noise issues. In addition to the requirements under the Licensing Act 2003, noise and other public nuisance issues such as litter, are subject to other legislation, including the Control of Noise at Work Regulations 2005, the Noise Act 2006 and the Clean Neighbourhoods and Environment Act 2005. Concerns about the potential for noise nuisance in particular, has had an effect on the provision of live music. (We comment further on this below).
- 2.3 Recently, an appeal decision in favour of local residents seeking to restrict the hours granted to a particular licensed premises on the grounds that there was *potential* for noise nuisance, was overturned following a judicial review where the judge ruled that residents need specific grounds to appeal licence applications. The judgement also makes the point that the grant of a licence should be subject to minimum bureaucracy and that due regard must be taken of the statutory Government guidance, which is approved by Parliament<sup>8</sup>.
- 2.4 With regard to dispersal issues in town centres, our view is that these have improved since the introduction of the Act, as the majority of town centre premises are now required to have door supervisors. This has had a positive impact on managing often large numbers of people in high streets and town centres in the evening. The role of the police, however, still remains crucial.
- 2.5 The introduction of the smoking ban across all public places from 1<sup>st</sup> July 2007 has proved something of a challenge for licensees in terms of noise management issues as well as the economic impact of the ban. Prior to the ban, some premises with formal outside areas such as beer gardens, patios or courtyards had accepted conditions on their licences prohibiting the use of these areas after a particular time in the evening, eg. 9.00pm. With the advent of the

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<sup>7</sup> DCMS Statistical Bulletin: Alcohol, Entertainment and Late-Night Refreshment Licensing (DCMS, November 2008)

<sup>8</sup> Daniel Thwaites Plc vs Wirral Borough Magistrates Court (6<sup>th</sup> May 2008)

smoking ban, some licensees applied for variations to remove such conditions or to extend the hours of use for the external areas, in order to provide an option for smoking customers.

- 2.6 For a significant minority of “landlocked” premises, which have no external area, smoking customers have little option but to stand outside the premises. It is, therefore, the knock-on effect of separate legislation which has, in some circumstances, led to problems with noise nuisance where none existed previously. We believe that reports of increased noise nuisance as a result of groups of smokers outside licensed premises are greatly exaggerated, but in those cases where noise has become an issue as a result of the ban, this can be addressed as necessary under the Licensing Act 2003.
- 2.7 **In our view, the Licensing Act 2003 has generally had a positive effect in terms of addressing public nuisance issues where they arise. There is no evidence to suggest that the Act itself has contributed to any increase in public nuisance. It has, however, contributed to improved relations between the police, local authorities and industry and better partnership working at local level.**

### **Night-time Offences**

- 2.8 While the BBPA has no figures of its own with regard to the impact of the Licensing Act 2003 on the numbers of night-time offences, it would take this opportunity to highlight the following published data:
- 2.8.1 The DCMS evaluation report published earlier this year states that the Home Office found that ‘local residents were less likely to say that drunk or rowdy behaviour was a problem after the (licensing regime) change than before it, and a majority thought that alcohol related crime was declining’.<sup>9</sup> Violent crime fell by three per cent overall in the year after the change, although there was an increase in the small proportion of violent crimes occurring between 3am and 5am in the first year of the new licensing regime<sup>10</sup>.
- 2.8.2 The DoH consultation document, *Safe, Sensible, Social*, clearly states that ‘alcohol-related violent crime fell by a third, from about 1.5 million incidents in 1997 to fewer than 1 million in 2007/08’.<sup>11</sup> While both the Liquor Licensing Act 1968 and the Licensing Act 2003 were in force during this period, DCMS have reported that following the implementation of the 2003 Act, ‘the overall volume of incidents of crime and disorder has remained stable and not risen’<sup>12</sup>.

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<sup>9</sup> Evaluation of the Impact of the Licensing Act (DCMS, March 2008)

<sup>10</sup> Home Office Research Report 04 – The impact of the Licensing Act 2003 on levels of crime and disorder: An Evaluation (Home Office, March 2008)

<sup>11</sup> *Safe, Sensible Social* – Consultation on Further Action (Department of Health, July 2008)

<sup>12</sup> Evaluation of the impact of the Licensing Act 2003 (DCMS, March 2008)

2.8.3 A survey by LACORS revealed that the majority of Primary Care Trusts, Police Authorities and Local Authorities surveyed believed that there has been no change in the level of alcohol related disorder since the Act came into force.<sup>13</sup>

2.8.4 A report for the Alcohol Education and Research Council by Middlesex University concluded that ‘the effect of the Licensing Act 2003 has been largely neutral. There has been little change in noise levels, alcohol-related violence/fights, drink driving alcohol-related crime and under-age drinking’.<sup>14</sup>

**2.9 Again, there is no evidence that the Licensing Act 2003 has led to any significant increase in the overall number of night-time offences.**

**Perception of public safety**

2.10 The promotion of public safety is, again, one of the four licensing objectives and is supported by additional health and safety legislation which must be complied with by all businesses. There are few, if any, significant health and safety issues in pubs which are not already addressed by legislation. The BBPA in conjunction with Noctis (formerly BEDA), has produced *Managing Safety in Bars, Pubs and Clubs*, a guide to assessing the risk of violence in individual licensed premises, which is based on existing good practice. Where specific high level risks are identified, the guide provides possible solutions to addressing these as necessary, for example through such measures as CCTV, toughened glass/polycarbonates, door staff, notices etc.

2.11 Negative perceptions of wider public safety issues and crime and disorder as a result of the Licensing Act 2003 have been largely fuelled by the media. In reality, there is no evidence that there has been a decline in public safety either inside or outside licensed premises, and indeed it is clear from Government figures that overall levels of violent crime are falling.<sup>15</sup>

**THE IMPACT OF THE ACT ON THE PERFORMANCE OF LIVE MUSIC**

2.12 The impact of the Licensing Act 2003 on live music has already been looked at in some detail by the Live Music Forum, chaired by Feargal Sharkey. The Forum concluded in its report published in July last year that, overall, ‘the Licensing Act 2003 has had a broadly neutral impact on the provision of live music.’<sup>16</sup> The report identified that most of the concern around live music was focused on the possibility that further risks of noise nuisance and crime and disorder might be created by licensed premises opening for longer hours after the introduction of the Act. The Forum was unable to find any evidence to support the idea that live music is a potentially greater widespread source of crime and disorder than other forms of licensed activities. In its report, the Forum has questioned the need for the licensing of live music at all

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<sup>13</sup> Licensing Act 2003 and the effect of alcohol (LACORS, June 2008)

<sup>14</sup> Implementation of the Licensing Act 2003: A national survey (Middlesex University for AERC, December 2007)

<sup>15</sup> Crime In England and Wales 2007/08 (Home Office, July 2008)

<sup>16</sup> Live Music Forum Findings & Recommendations (for DCMS, July 2007)

“given that there is little if indeed any inherent harm in the performance of live music”. When looking at how and if live music events should be licensed, the key consideration for the Forum was that controls should be proportionate to the scale and nature of the event.

- 2.13 The DCMS evaluation report on the Act which was published earlier this year also notes that ‘there has been no serious adverse effect on the provision of live music’ as a result of the Act.<sup>17</sup> However, there does not appear to have been any increase in the provision of live music, which was supposed to be promoted under the Act. It is also likely that live music is under threat from other legislation such as the Control of Noise at Work regulations 2005, and the increasingly expensive copyright licences which must be obtained from the Performing Rights Society and Phonographic Performance Ltd.
- 2.14 As a result of the Control of Noise at Work Regulations 2005, which have implemented new European restrictions on noise levels in the workplace, noise levels have been significantly reduced from 85dBA to 80dBA at the “lower action level” and 90dBA to 85dBA at the “upper action level”. Because noise is measured on a logarithmic scale, these are significant reductions. Noise levels may be averaged in respect of staff, but it follows that some premises will need to reduce their overall noise levels, which in turn should have an impact on potential noise nuisance as a result of music and entertainment for example.
- 2.15 The draft Regulatory Reform Order introducing a minor variations process into the licensing system is likely to implement a number of the recommendations of the Live Music Forum’s report, including a de minimis exemption for small scale live music events, up to no more than 200 people in licensed premises (where there would be a greater degree of control) and a limit of 100 people in unlicensed venues. ‘Incidental music’ is also to be clarified by importing a definition that is now in the Guidance to the Act. At a recent meeting with DCMS officials to discuss these proposals, representatives of the live music sector and the trade were in favour of the proposals which are a positive response to the perceived fall in live music events at small venues since the introduction of the Licensing Act 2003, particularly those that would previously have taken advantage of the two-in-a-bar rule.
- 2.16 The City of London is currently consulting on changes to its licensing policy, which would introduce the following mandatory condition on all new premises licences and variation applications under its jurisdiction:

*"No promoted events shall take place at the premises except where express written consent of the Commissioner of Police for the City of London being given no less than 14 days prior to the event. A promoted event is an event involving music and/or dancing where the musical entertainment is provided at any time between 11pm and 7am by a Disc Jockey or Disc Jockeys one or some of whom are not employees of the Licensee (Premises Licence Holder) and the event is promoted to the general public".*

- 2.17 Such an approach is fundamentally contrary to the Licensing Act 2003 and the statutory Government Guidance to the Act, which make it clear that blanket conditions across all

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<sup>17</sup> Evaluation of the impact of the Licensing Act 2003 (DCMS, March 2008)

premises, other than those mandatory conditions explicitly stated in the Act itself, are prohibited. If the police are concerned about a particular licence application in respect of music and dancing, then they are able to make representations on that application. In the case of Temporary Event Notices, the police can also make representations on TEN applications on the grounds of crime and disorder. The statutory notice period for TENs is ten days. The process as proposed is clearly ultra vires, and the BBPA has responded to the consultation to this effect.

- 2.18 There was no satisfactory reason given as to why the “two-in-a bar” rule could not have been carried over into the new regime during transition in the same way as other licence permissions, with only new licence applications having to apply for live music going forward. It was the only permission which was excluded from Grandfather Rights in this way. Those venues which had a Public Entertainment Licence under the previous licensing regime were able to grandfather this permission which allowed them to have a much greater scale of entertainment, including live music involving more than two musicians as well as DJs, music and dancing.

#### **THE FINANCIAL IMPACT OF THE ACT ON SPORTING AND SOCIAL CLUBS**

- 2.19 The Association has no comments to make on this aspect of the Inquiry, as it is outside our area of expertise.

#### **WHETHER THE ACT HAS LED, OR LOOKS LIKELY TO LEAD, TO A REDUCTION IN BUREAUCRACY FOR THOSE APPLYING FOR LICENCES UNDER THE NEW REGIME AND FOR THOSE ADMINISTERING IT**

- 2.20 In general terms, we believe that the Licensing Act 2003 has made the licence application process more straightforward for most types of premises. For example, it is simpler to apply for a Personal Licence and there is more consistency in the overall process. However, a number of issues have arisen in the course of the first three years of the Act which bear greater scrutiny with a view to simplifying the process further and reducing bureaucracy for those involved. We are pleased to expand on these as follows:

#### **Triennial Review of Local Licensing Policies**

- 2.21 The Association sees no need for local licensing policies to be reviewed and republished every three years as required by the Act, particularly as it is open to Councils to review their policies at any time within that period. The process is onerous for both licensing authorities and those wishing to respond to policy consultations. We would also argue that the consultation process itself is flawed. During the most recent review of local policies, the vast majority were presented for consultation without any recommendations for amendments by local authorities. Any changes made post-consultation as a result of comments received, were not then subject to further consultation. We also found that industry comments were very often disregarded.



### **Application Process**

- 2.22 The BBPA strongly supports the recommendations made in the Elton Review with regard to the need for further simplification of all forms required by the licensing process, including premises licence application forms and Designated Premises Supervisor Transfer forms. The current application form is 28 pages long, and there is certainly scope for a more streamlined approach.
- 2.23 In the interests of minimising cost and bureaucracy for applicants, the Association would also support a “one-stop-shop” approach to applications for premises licences or variations to premises licences, where the application is sent to the licensing authority only, which would then be responsible for distributing it to all of the *relevant* responsible authorities under the Licensing Act 2003. It should also be possible to submit applications by electronic means.
- 2.24 At the moment, applicants must send hard copies of their full application (including the plan of the premises) to the licensing authority and each of the seven responsible authorities under the Act, ie. the police, the fire authority, trading standards, the child protection body, environmental health, the planning authority and health and safety. This obviously incurs photocopying costs and above average postal costs, since it is advisable to send the documentation by registered post to ensure proof of postage in case one of the responsible authorities does not receive the application (which would otherwise invalidate the application, leaving the applicant to re-apply and incur further cost, including additional advertising costs).
- 2.25 We understand that these additional copies are not necessarily kept on file by the responsible authorities, and have heard that some councils shred them once the application process is complete, with just one copy being retained by the licensing authority. We believe that the administrative and cost burdens on applicants could be significantly minimised if licensing authorities could distribute copies of applications to those involved in the process.

### **Local Licensing Policies**

- 2.26 While we accept that local licensing authorities should have policies on how they administer the Act, we do not necessarily consider that local policies should be, in effect, a set of local rules about how licensed premises are run. There is a huge variation in the approach of local authorities to the Licensing Act 2003, ranging from minimal to very prescriptive policy requirements. It is a cause of concern for us that many local policies are overly long and complex, and have been drafted to include blanket conditions (prohibited by the Act), common examples of which include:
- membership of Pubwatch
  - requirement for the Designated Premises Supervisor to be on site at all times
  - duplicating existing legislation (eg. health and safety, disability law)
  - Challenge 21/PASS

- requirements on glass and polycarbonates
- restrictions on opening hours
- minimum pricing

2.27 The BBPA won a judicial review of Canterbury City Council’s licensing policy in 2005, when the judge ruled the policy was *ultra vires* on the basis that it could mislead applicants into including measures in their operating schedules which may not have been necessary for their particular businesses. Nevertheless, members continue to bring to our attention examples of initiatives and local actions, recent examples of which include:

- An “Acceptable Behaviour Contract” ‘voluntarily’ binding licensed premises to operate Challenge 21
- A Voluntary Code of Conduct requiring licensed premises to sign up to a number of standards, eg. On entry times, dress code, which is effectively a list of blanket conditions
- Pressure on premises to use polycarbonates, regardless of the risk level of the premises and whether this is warranted or necessary to promote the licensing objectives

2.28 Such requirements are building unnecessary bureaucracy, and therefore cost, into the licensing system, and at local level can have a detrimental effect on partnership working.

2.29 Our analysis of local policies following the recent triennial policy review is enclosed at Annex 2.

**2.30 The licensing system is generally based on complaint, not prevention. However, we are seeing an increasing trend for pre-emptive enforcement by councils and police.**

### **Minor Variations**

2.31 Towards the end of 2006, the BBPA was pleased to have the opportunity to discuss various issues with DCMS officials in the context of its departmental “Simplification Plan”, in order to assist in identifying any continued barriers to savings. The key issue that emerged was the need for a “fast track” or “minor” variation process which did not require full representations, advertising etc. Currently, a variation application is effectively a re-run of the licence application process, with the same cost to a pub business. We estimate this cost to be in the region of £1,800.

2.32 The Association has, therefore, welcomed the proposed Regulatory Reform Order to introduce a minor variations process into the Act, which will reduce bureaucracy and cost to both applicants and licensing authorities, enabling small changes to be considered more efficiently without the need for representations from responsible authorities, advertising etc. It is important that the objective of the RRO, namely the reduction of unnecessary bureaucracy, remains central to the process going forward.

- 2.33 We would also take this opportunity to point out that a number of variation applications are made simply to amend the plan of the premises. The Association did not originally envisage that the plan would form part of the licence per se, but this is now the case. We do not believe that this is necessary and suggest that there is scope to divorce the plan from the licence so that it can be amended as necessary without the need for a formal variation application, even under the new minor variation process, which will not be implemented for some time yet. Where any amendment to the plan is as a result of a new activity, then of course a formal variation application would still need to be made in order to allow this to take place on the premises.

### **Interim Authority Notices**

- 2.34 Seven days is not sufficiently long a period to apply for an interim authority notice, particularly where there has been a bereavement, and relatives of the deceased have other duties to attend to. We are aware that there have been cases where the time limit has caused unnecessary hardship for licensees. The case of a Welsh licensee, whose family failed to change the licence within a week of their father's death and were prevented from running the business as a pub selling alcohol. The case was taken up by Peter Hain MP who dubbed the interim authority period a 'bureaucratic nightmare'. Where an interest has been registered in the premises by a brewer or pub company, we see no reason why the responsibility for running the premises could not revert automatically to them. During the passage of the Licensing Bill through Parliament, the BBPA promoted an amendment to allow a more reasonable and sympathetic interim period which was rejected by the Government.
- 2.35 The loss of the licensee should not affect the premises licence, it should be possible to install another personal licence holder, who registers with the police, in order to keep the business running.

### **Slip Rule for Local Authorities**

- 2.36 The BBPA, along with other industry bodies and local authority representatives, has previously made the case for a "slip rule" which would allow licensing authorities to correct minor mistakes on applications in discussion with the applicant, rather than applicants having to repeat the full application process at what may be substantial additional cost.

### **Amendment of the Licensing Act 2003**

- 2.37 The Violent Crime Reduction Act 2006 amended the Licensing Act less than one year after the implementation of the new licensing regime. The Association does not believe that there is any evidence that such changes to a new piece of legislation were necessary or justifiable. The "three strikes and out" offence for staff found selling alcohol to customers under 18, which was one of the changes to the Act, is now being amended again to "two strikes and out". Given that the pub sector has greatly improved its record on under-age sales following increased enforcement of the law in this area, we question the need for this. We are also

concerned about further amendments to the Act arising from the current Government consultation on *Safe, Sensible, Social*. We comment further on this in paragraph x.

- 2.38 The Violent Crime Reduction Act 2006 also introduced the concept of “alcohol disorder zones”- (ADZs). The whole concept is flawed, as is evidenced by the widespread criticism that ADZs attracted from police, local authorities and industry during its passage through Parliament, and undermines the underlying philosophy of the Licensing Act 2003, which is that each premises should be treated on its own merits.

#### **WHETHER THE ANTICIPATED FINANCIAL SAVINGS FOR RELEVANT INDUSTRIES WILL BE REALISED**

- 2.39 Government estimates of the cost to industry of maintaining a licence under the Liquor Licensing Act 1964 were between £1,500 and £7,000 a year. The cost of the licence itself was £30 for three years. The main reason for the difference in the two costings is a £5,000 lawyer’s fee for contested licences as opposed to £150 for an uncontested application. The result is a compliance cost of over £4 billion set against an estimate for the new regime of £2 billion (of which around £400m is attributable to pubs) – both over 10 years.
- 2.40 The BBPA would argue that the cost estimates of the old system were exaggerated insofar as the £5,000 contested fees would only have arisen in a small number of premises and that even at £1,500, at the bottom end, this would be an over-estimate for the vast majority of pubs. It is arguable that the original estimate of the costs of the old system should have been around £2 billion, which makes the *Time for Reform* White Paper Regulatory Impact Assessment (RIA) estimate of savings to the industry of £2 billion look rather optimistic.
- 2.41 Since the White Paper RIA was published the Government has stuck to its estimates of savings despite raising the direct costs of fees in its consultation paper and then again after that consultation. We calculate that the additional cost to the industry of operating the new system is nearly £0.66 billion over and above those estimates used in the RIA.
- 2.42 It is widely acknowledged by BBPA members that the transition process to the new licensing regime was more complicated than was necessary. According to the Elton Report, the excess cost of transition was £95 million. The vast majority of companies employed additional staff to cope with the workload and commissioned additional legal support. Since transition, some companies have retained a team of licensing administrators which has meant that they are outsourcing less than was the case under the Liquor Licensing Act 1964. While there has not been a significant increase in costs as a result of the new law, there is no significant saving. Many companies continue to rely on legal support as before. The overall costs to industry are more than originally expected due to:
- The last minute introduction of the multiplier fee (which was not included in the original RIA)
  - The costs of advertising applications (not a recommendation of the DCMS Advisory Group)

- The time and effort involved in the application process (including the complexity of the forms, the requirement to copy eight responsible authorities etc.)
- The time and effort involved in the variation process which is, in effect, the same as the application process even where the change required is minor, with little or no impact on the licensing objectives
- The increased use of Temporary Event Notices
- The large numbers of DPS transfers
- Increasingly costly conditions (eg. Growing demands for CCTV, doorstaff, due diligence systems etc.)

- 2.43 Many financial savings that the Act may have achieved are, in many cases, being eroded by other Government policy areas such as *Safe, Sensible, Social* and mandatory codes of practice. The costs of Alcohol Disorder Zones remain unknown at this stage, but the Home Office Consultation Document estimated these to be in the region of £200 per week per premises. DCMS and others tend to underestimate the true cost of the licensing regime on pubs.
- 2.44 The Government has yet to implement the recommendations of the Elton Report, many of which we agree with, in particular the need for a single annual payment date for annual charges for premises licences, further simplification of the application processes through more streamlined forms, clearer Guidance for local authorities as to what enforcement should form part of the on-going costs of licensing (the Panel believes that pre-existing enforcement costs should not be borne by the licence fee), and re-definition of those premises that are liable for the multiplier to include “all Band D & E premises in city and town centres”.

#### **OTHER RELEVANT ISSUES**

##### **Alcohol Strategy – *Safe, Sensible, Social***

- 2.45 Alcohol policy is under discussion in many forums from the World Health Organisation (WHO) to European and national level, right down to local authority groups and forums. There is a great deal of activity in this area, which requires co-ordination and liaison with other related policy areas such as licensing.
- 2.46 The Department of Health is currently consulting on the next stages of the national alcohol strategy, *Safe, Sensible, Social*. The document recognises that “it is up to individuals to decide whether to drink alcohol and how much they drink. It is not Government’s role to restrict this, unless drinking would take place under circumstances that place the individual or others at unreasonable risk.”
- 2.47 The on-licensed trade accepts its responsibility for managing premises properly and providing a safe environment in order to minimize harm to others. It will continue to play its part by selling alcohol responsibly, in particular not selling to under 18s and not serving drunks. We must also, however, acknowledge that customers are ultimately responsible, and accountable, for their own behaviour. The Government should not seek to excuse those customers who

choose to misuse alcohol and behave badly as a result. The Association welcomes the recent Government advertising campaigns on “know your limits”, and believe that this is absolutely the right approach to achieve a long-term cultural shift in drinking habits and attitudes to alcohol. This shift will not be achieved by repeated regulation of an industry which is increasingly unable to absorb the cost of further legislation.

- 2.48 In our view, Government policy in respect of all licensed premises continues to be based on high energy music and dancing venues which are primarily to be found in town centres. Such an approach fails to recognise that there is an infinite variety of licensed premises covered by the Licensing Act 2003, including village halls, community and rural pubs, cinemas, theatres, restaurants, hotels and late night take-aways. The key challenge for town and city centres across the UK today is the management of often very large numbers of people on the streets, particularly once they have left licensed premises. The industry has become increasingly professional over the last 15 years or so, thanks to the qualifications developed by the BII and wider availability of industry guidance. This has been acknowledged by the police, but it is clear that in some cases this improved management of licensed premises has led to the displacement of problems to outside the premises, into the town centre space.
- 2.49 Business Improvement Districts in particular are a positive approach to solving town centre problems, as they are not only a way of ensuring partnership working between all those who can make a difference to these wider issues, but they also provide an opportunity to address the issues in question.
- 2.50 Since the changes to the licensing laws, there is evidence which indicates that customers are going out later than before the changes to the licensing laws and that they are “pre-loading” with alcoholic drinks at home beforehand, 37% of 18-24 year olds surveyed by YouGov ‘pre-loaded’ before going to licensed premises.<sup>18</sup> Despite this, 78% of all people drink about the same amount as they did before the Act came into effect.<sup>19</sup> In the DCMS evaluation report on the Licensing Act 2003, a Home Office survey also shows that ‘the majority of respondents...agreed that rapid drinking close to last orders had decreased since the Licensing Act’.<sup>20</sup>
- 2.51 The BBPA does not see that the invention of a Code as proposed by *Safe, Sensible, Social*, be it voluntary or mandatory, will be any more successful than the existing industry standards in addressing the issues of irresponsible practice in a minority of venues based in high streets or city centres, as highlighted by the KPMG report. The vast majority of on-licensed trade venues – ranging from hotels and restaurants, pubs, nightclubs, through to members clubs and village halls – are selling alcohol responsibly, and should not be penalised for the irresponsible actions of the few.

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<sup>18</sup> YouGov Poll for BBPA, November 2007

<sup>19</sup> YouGov poll for BBPA, November 2007

<sup>20</sup> Quoted in Evaluation of the impact of the Licensing Act 2003 (DCMS, March 2008)

- 2.52 We refute the findings of the KPMG report as a basis on which to introduce a Code, as we do not consider that they reflect practice in the pub sector as a whole. The evidence presented is subjective and unscientific, and presents a distorted view of pubs. In addition, the on-licensed premises surveyed were almost exclusively located in town centres and were late-night, music and dancing premises. Where a premises is not meeting its obligations to promote the licensing objectives contained in the Licensing Act 2003, then enforcement authorities are able to address its shortcomings through a review of the licence and/or the attachment of any necessary conditions to improve the overall running of the venue in question. The Association does not condone those examples of bad practice highlighted in the report, but believes that enforcement of existing legal mechanisms, in particular the Licensing Act 2003, must be brought to bear in such cases.
- 2.53 Any form of blanket approach to restrictions would be incompatible with the Licensing Act 2003, as would a sectoral approach, since the whole ethos of the Licensing Act is to be able to impose any appropriate conditions either at the licence application stage where these are necessary to promote the licensing objectives, or following a review of the licence.
- 2.54 The proposals contained in *Safe, Sensible, Social* will impose an ever bigger burden on small businesses, and force an ever increasingly amount of alcohol to be sold in the off-trade rather than in the controlled environment provided by licensed premises. The BBPA response to the consultation document will be available shortly.

## Licensing Policies and the Licensing Act Introduction

## Annex 2

The Licensing Act 2003 made provision for the sale and supply of alcohol and about offences relating to this subject. One of the key changes from the previous licensing regime was the transfer of the responsibility of licensing from licensing justices to the Local Authority. Local Authorities are required by the Act to draw up a Licensing Policy, the purpose of which is to outline the law and local requirements for those applying for a licence.

The Act stipulates that licensing policies must be reviewed every three years. The first policies were put out for consultation in 2004 and issued in January 2005. The revised policies had to be in place by January 2008 to comply with the Act.

The BBPA commented on the 2004/5 policies and gave feedback to almost every Local Authority. The same process had to be carried out less than three years later for the 2007 consultations. The BBPA responded to around 300 Local Authorities for the second time.

The aim of the BBPA's response to these consultations is primarily to identify and remedy any potential licensing issues that will affect BBPA members by raising them with the Licensing Authority at a stage when, in theory, they can be amended.

### Sample

The BBPA responded to 293 Local Authority licensing policy consultations. The policies were then divided into three categories (red, amber and green) based on the length of the BBPA response to the consultation. For example, a policy that required a detailed response of nine pages was classed as a red policy, whilst one that required a two page response was classed as green.

Length of Response (page)	Number of Policies
<b>5-10</b>	<b>23</b>
<b>3-4</b>	<b>140</b>
<b>1-2</b>	<b>130</b>
	<b>293</b>

The majority of policies were classed as amber (48%). Green policies made up 44% and red 8%. From these three policy classes, a further sample of 23 policies was taken at random. From the red policies, a list was compiled of the fourteen most prevalent issues (listed below).

*Sets minimum pricing*

*Overly prescriptive policy*

*Short Consultation Period*

*Duplicates existing legislation*

*Restricts opening hours*

*Mandatory use of PASS and Challenge 21*

*Enforces glass or polycarbonates*

*DPS must be on site at all times*

*Problems with operating schedule*

*Compulsory late-night doorstaff*

*Membership of a Pubwatch as a condition*

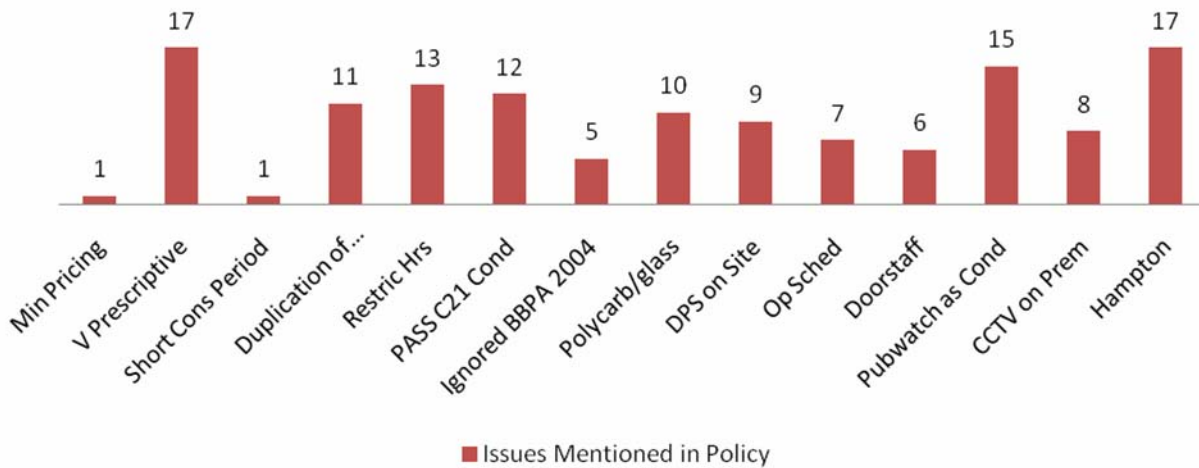
*CCTV as a condition*



*Ignored BBPA's 2004 Recommendations  
followed*

*Reminder that Hampton Principles must be*

### Issues Mentioned in 23 'RED' Policies



### Issues Mentioned in 23 'AMBER' Policies



### Issues Mentioned in 23 'GREEN' Policies

