House of Commons
Culture, Media and Sport Committee

The Licensing Act 2003

Sixth Report of Session 2008–09

Report, together with formal minutes, oral and written evidence

Ordered by the House of Commons
to be printed 30 April 2009
The Culture, Media and Sport Committee

The Culture, Media and Sport Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Department for Culture, Media and Sport and its associated public bodies.

Current membership

Mr John Whittingdale MP (Conservative, Maldon and East Chelmsford)
Janet Anderson MP (Labour, Rossendale and Darwen)
Mr Philip Davies MP (Conservative, Shipley)
Mr Nigel Evans MP (Conservative, Ribble Valley)
Paul Farrelly MP (Labour, Newcastle-under-Lyme)
Mr Mike Hall MP (Labour, Weaver Vale)
Alan Keen MP (Labour, Feltham and Heston)
Rosemary McKenna MP (Labour, Cumbernauld, Kilsyth and Kirkintilloch East)
Adam Price MP (Plaid Cymru, Carmarthen East and Dinefwr)
Mr Adrian Sanders MP (Liberal Democrat, Torbay)
Helen Southworth MP (Labour, Warrington South)

Powers

The Committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the Internet via www.parliament.uk.

Publications

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at

http://www.parliament.uk/parliamentary_committees/culture__media_and_sport.cfm

Committee staff

The current staff of the Committee are Tracey Garratty (Clerk), Martin Gaunt (Second Clerk), Elizabeth Bradshaw (Inquiry Manager), Anna Watkins/Lisa Wrobel (Senior Committee Assistants), Ronnie Jefferson (Committee Assistant) and Laura Humble (Media Officer).

Contacts

All correspondence should be addressed to the Clerk of the Culture, Media and Sport Committee, House of Commons, 7 Millbank, London SW1P 3JA. The telephone number for general enquiries is 020 7219 6188; fax 020 7219 2031; the Committee’s email address is cmscom@parliament.uk.
## Contents

**Report**

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Summary</td>
<td>3</td>
</tr>
<tr>
<td>1 Introduction</td>
<td>5</td>
</tr>
<tr>
<td>2 Our inquiry</td>
<td>6</td>
</tr>
<tr>
<td>3 The Licensing Process</td>
<td>7</td>
</tr>
<tr>
<td>Applying for a Licence</td>
<td>7</td>
</tr>
<tr>
<td>Costs</td>
<td>8</td>
</tr>
<tr>
<td>Opportunities for increased involvement in licensing decisions</td>
<td>12</td>
</tr>
<tr>
<td>Personal Licence Holders</td>
<td>13</td>
</tr>
<tr>
<td>Death of licence holder</td>
<td>15</td>
</tr>
<tr>
<td>Legislative Reform of the Licensing Act</td>
<td>15</td>
</tr>
<tr>
<td>Temporary Event Notices</td>
<td>17</td>
</tr>
<tr>
<td>Objection to a TEN</td>
<td>18</td>
</tr>
<tr>
<td>Control of the TENs system</td>
<td>19</td>
</tr>
<tr>
<td>Cost of applying for a TEN</td>
<td>20</td>
</tr>
<tr>
<td>4 The night-time economy</td>
<td>20</td>
</tr>
<tr>
<td>Diverse premises</td>
<td>20</td>
</tr>
<tr>
<td>Law and order</td>
<td>21</td>
</tr>
<tr>
<td>Partnership working</td>
<td>23</td>
</tr>
<tr>
<td>Problem premises</td>
<td>25</td>
</tr>
<tr>
<td>Drinks promotions</td>
<td>26</td>
</tr>
<tr>
<td>5 Live music and entertainment</td>
<td>27</td>
</tr>
<tr>
<td>The impact of the Licensing Act on live music</td>
<td>27</td>
</tr>
<tr>
<td>Music as a public nuisance and disorder issue</td>
<td>30</td>
</tr>
<tr>
<td>6 “Portable” entertainment</td>
<td>32</td>
</tr>
<tr>
<td>Traditional and community activities</td>
<td>33</td>
</tr>
<tr>
<td>Travelling performers</td>
<td>33</td>
</tr>
<tr>
<td>7 The adult entertainment industry</td>
<td>36</td>
</tr>
<tr>
<td>Licensing of clubs</td>
<td>37</td>
</tr>
<tr>
<td>Future control of lap dancing establishments</td>
<td>37</td>
</tr>
<tr>
<td>8 Conclusion</td>
<td>39</td>
</tr>
<tr>
<td>Conclusions and recommendations</td>
<td>39</td>
</tr>
</tbody>
</table>
Summary

The licensing process

We note that although the Licensing Act has simplified and improved the licensing process there is still concern that the system is too bureaucratic, complicated and time-consuming, especially where a premises is run by volunteers. We conclude that the Government should, together with local authorities, licence applicants and other stakeholders, evaluate the licensing forms with the aim of making them more user friendly.

Sporting and not-for-profit clubs

We are concerned that sporting and not-for-profit clubs should face the same licensing costs as the commercial sector. We believe that it is highly unsatisfactory that such clubs, with modest turnover and laudable aims, should be treated in exactly the same way as commercial operations. This is particularly the case with sporting clubs, which play an important role in ensuring community access to affordable opportunities to participate in physical activity. We conclude that in the case of not-for-profit clubs only the bar area should be taken into account when assessing the rateable value of the premises for the purpose of determining the appropriate licensing fee. In the case of sports clubs we recommend that they should be placed in a fee band based on 20% of their rateable value.

Personal licence holders

We note that it is important that there is appropriate control of the personal licence holder system in order to prevent abuse, and recommend the implantation of a national database of licence holders to improve the level of information available to local authorities and the police. We are not convinced by the Government’s argument that lack of evidence of such abuse is a reason not to create a national database; indeed we believe without one it seems unlikely such evidence could be proffered. We further recommend that, where a personal licence must be transferred due to the death of the licence holder, the allowable period for doing so should be increased from seven to 21 days.

Temporary event notices

We note the use of the Temporary Event Notice (TEN) system by many premises and organisations, especially community groups, who do not hold a premises licence, and the conflicting evidence as to whether the current limit of 12 events per year is too many or too few. We conclude that the time is right for a modest increase in the number of TENs which can be applied for to 15 and a relaxation of the rule on the number which can be applied for by any individual. We recommend that this should be balanced by an enhancement of the ability to object to the granting of a TEN, with both the police and local councillors able to make such an objection within a period of three working days from receipt of the application.
The night-time economy

We welcome the successful development of partnership working between licensing authorities, relevant authorities such as the police and fire service, and licensees themselves in order to solve licensing problems and promote the licensing objectives. However we are concerned that the relaxation of rules on premises’ closing hours have not diminished law and order problems, but have merely moved them one or two hours later than previously. We conclude that the density of venues in a particular area should always be a consideration when granting a premises licence and that the Government should support the bar and pub trade in encouraging responsible drinks promotions.

Live music and entertainment

We are concerned at the linkage of live music and public order issues by the Licensing Act and its accompanying guidance, and we emphasise that music should not automatically be treated as a disruptive activity which will inevitably lead to nuisance and disorder. We therefore conclude that the Metropolitan Police’s Promotion and Event Assessment Form, Form 696, goes beyond the requirements of both the Act and its Guidance to impose unreasonable conditions on events and that it should be scrapped. To encourage the performance of live music we recommend that the Government should exempt venues with a capacity of 200 persons or fewer from the need to obtain a licence for the performance of live music. We further recommend the reintroduction of the two-in-a-bar exemption, enabling venues of any size to put on a performance of non-amplified music by one or two musicians.

“Portable” entertainment

We conclude that the Licensing Act works well when licensing entertainment provided in a permanent building, but that its success is more limited when either the premises or the entertainment is portable. We note the huge difficulty and expense experienced by circuses in complying with the new regime. We conclude that it is right for circuses to be subject to the Licensing Act but that they should be issued with a portable licence by their home authority. We further recommend that the Government should consult on exempting certain low risk, small-scale travelling entertainments such as Punch and Judy, and activities which add to communities’ cultural life, such as travelling plays by mummers.

The adult entertainment industry

We note that there are no specific provisions in the Licensing Act or its guidance to give licensing authorities extra powers to control lap dancing clubs. We understand the frustration of the public that objections to a licence for such establishments cannot be made on the grounds of the type of entertainment which it will provide. For this reason we welcome the Government’s proposal, contained within the Policing and Crime Bill, to move licensing of lap dancing to the Local Government (Miscellaneous Provisions) Act. However we recommend that a new category should be created for such clubs and that it should be compulsory for local councils to use this system to licence them.
1 Introduction

1. The Licensing Act 2003 sought to streamline the licensing process, replacing eight separate regimes for different forms of licence, governed by three different licensing authorities, with a single regime under the administration of a single licensing authority (normally the local authority).

2. The Act created a range of authorisations, to be issued by licensing authorities (almost always local authorities) to applicants:

   • personal licences, which authorise individuals to sell or supply alcohol;
   • premises licences, which authorise the use of premises for licensable activities;
   • club premises certificates, which authorise the use of club premises for certain licensable activities; and
   • temporary event notices (TENs), which authorise licensable activities at one-off or “occasional” events.

3. Decisions in licensing were to have regard to four licensing objectives, written into the Act:

   • the prevention of crime and disorder;
   • public safety;
   • the prevention of public nuisance; and
   • the protection of children from harm.


4. At Third Reading of the Licensing Bill on 16 June 2003,1 the Secretary of State claimed “this is a far-reaching Bill that will have a material impact on the central issue of quality of life, and how we as a nation use our leisure time. It will sweep away swathes of red tape and bureaucracy, delivering to the industry savings of nearly £2 billion over 10 years” with “a range of measures to tackle alcohol-related crime and disorder and antisocial behaviour”.2

5. The Government carried out an evaluation of the impact of the Licensing Act which was published on 4 March 2008.3 This review considered levels of crime and disorder and late-night venues’ closing times and reviewed the statutory guidance to licensing authorities. It drew on the views of 10 local authorities on the Act’s implementation, an independent report of the fees structure, and a report from the Live Music Forum on the impact of the

---

1 HC Deb, 16 June 2003, col 169
2 HC Deb, 16 June 2003, col 169
3 Department for Culture, Media and Sport, Evaluation of the impact of the Licensing Act 2003, March 2008
Act on live music. It proposed a simplification plan to improve the licensing regime. The evaluation concluded that “This first review of the Licensing Act reveals a mixed picture”.

2 Our inquiry

6. In order to understand the reasons for this “mixed picture” the Committee decided to undertake our own post-legislative scrutiny of the Act, announcing terms of reference on 18 July 2008. We aimed to assess to what extent the benefits promised by the Government during the passage of the legislation had been achieved, and to assess whether the Act worked well in practice. Our call for evidence asked for views on the following issues.

- 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;
- The impact of the Act on the performance of live music;
- The financial impact of the Act on sporting and social clubs;
- 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;
- Whether the anticipated financial savings for relevant industries will be realised.

7. We received a wide range of written submissions, from local councils, police bodies and the Magistrates’ Association, from trade bodies of the pub, night club, off-licence, music, entertainment, tourism and lap dancing industries, from sporting and leisure clubs, from churches and community venues, from the circus industry and from both groups and individuals concerned with anti-social behaviour, alcohol and lap dancing. We took oral evidence from a range of witnesses including representatives of licensing authorities, the sports and not-for-profit sector, pubs, clubs and off-licences and the relevant Minister. We thank all those who made submissions to us. We also record our thanks to our Specialist Adviser, Sara John, who has provided us with advice on the legal aspects of the Licensing Act.

8. During the course of our inquiry the Government confirmed that it would bring forward three Legislative Reform Orders to alter licensing requirements in certain areas. Two of those Orders, relating to the supervision of alcohol sales in church and village halls and introducing a “minor variations” procedure to premises licences and club premises certificates, have been laid before Parliament, and the first has come in to force. A third Order, to exempt certain “de minimis” activities from the licensing regime, is still in preparation. The Police and Justice Bill, currently before Parliament, also proposes changes to the licensing regime in respect of lap, pole and table dancing clubs. We have taken the contents of the Legislative Reform Orders and the Bill into account when considering our recommendations in this Report.

---

4 Evaluation of the impact of the Licensing Act, p7
The Licensing Process

Applying for a Licence

9. The introduction of the new system aimed to simplify the process of licence application for the licence-holder. The Government told us that it believes that a substantial reduction in bureaucracy has been achieved.\(^5\) Following the coming into force of the Licensing Act, the application process for a licence is, in summary, set out below:

- Applications for a premises licence or for amendment are subject to public notice;
- During the period of the notice (20 working days), representations are admissible from responsible authorities (such as the police, the local Fire Authority, and local environmental health, planning and child protection services), individuals and businesses living or working in the vicinity of the premises;
- If no representations are received, the application has to be granted;
- If representations are received, the application is determined by the Licensing Committee at a public hearing at which all interested parties are given the opportunity to express their views;
- At the hearing, the Licensing Committee may either grant the application, with or without imposing conditions, or it may dismiss it;
- Both the applicant and the objectors have 28 days in which to appeal to the Magistrates Court against the decision of the Licensing Committee.

10. Many of those who submitted evidence to us agreed that the removal of eight separate licensing regimes and their replacement with a new, streamlined process under the 2003 Act had been a welcome development. The British Beer and Pub Association reported that “in general terms, we believe that the Licensing Act 2003 has made the licence application process more straightforward for most types of premises”,\(^6\) and a survey of one in seven councils, half of police authorities and just under a third of all Primary Care Trusts conducted by the Local Government Association, to gauge views on implementation of the Act, concluded that the Act had simplified and improved licensing processes and had contributed significantly to closer public sector working.\(^7\)

11. There were concerns however, especially from those whose premises were run by volunteers, that the process of applying for a licence is still too bureaucratic, complicated and time-consuming. This is despite the fact that much of the effort is now front-loaded as the licence, once granted, is not required to be routinely renewed. The Central Council for

\(^5\) Ev 140
\(^6\) Ev 74
\(^7\) Ev 1
Physical Recreation (CCPR) told us that in a survey of its members they reported a marked increase in the administrative burden placed on club volunteers by the new regime:

“It is clear from this feedback that rather than reducing bureaucracy for sports clubs, the Act has led to a significant administrative burden for club volunteers during its first year of implementation”.8

The Committee of Registered Clubs Association (CORCA), which represents working men’s, political, ex-service and coal industry welfare clubs, reported that its members found the required forms “lengthy and not user friendly”.9

12. We have heard that errors on application forms are currently running at 65%.10 Despite Government guidance to local authorities that “forms should not be returned if they contain obvious and minor factual errors that can easily be amended”11 many local authorities are rejecting applications which contain minor errors, leading to increased administrative time and cost:

“This was typified recently by an applicant who had met all the correct requirements of an application, including newspaper advertising, but whose local notices issued on blue paper had faded in the sun. Only at the end of the statutory display period was the applicant informed that a completely new application with the additional costs of re advertising was therefore required”.12

13. We recommend that the Government should, in conjunction with local authorities, licence applicants and other stakeholders, evaluate the licensing forms with the aim of making them more user friendly and reducing the level of error. The Government should also remind local authorities that licensing applications containing minor factual errors should be amended not rejected.

Costs

14. The fees for an application for a licence were set by Regulations in 2005, on the basis of full-cost recovery. Fee levels for premises licences and for club premises certificates are set in bands according to rateable values. Premises with a rateable value of £4,300 or less fall within Band A and incur a fee of £100; at the top end of the scale (Band E), premises with a rateable value of £125,001 or above incur a fee of £635. A premises licence, once granted, may last indefinitely unless revoked. An annual fee is payable, at rates set out in Schedule 5 to the Regulations.

8 Ev 35
9 Ev 36
10 Q41 ff.
11 Department for Culture, Media and Sport, Guidance issued under Section 182 of the Licensing Act 2003, 28 June 2007, paragraph 8.25
12 Ev 156
<table>
<thead>
<tr>
<th>Rateable value of applicant premises</th>
<th>Band</th>
<th>Base fee</th>
<th>Annual base fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nil to £4,300</td>
<td>A</td>
<td>£100</td>
<td>£70</td>
</tr>
<tr>
<td>£4,301 to £33,000</td>
<td>B</td>
<td>£190</td>
<td>£180</td>
</tr>
<tr>
<td>£33,001 to £87,000</td>
<td>C</td>
<td>£315</td>
<td>£295</td>
</tr>
<tr>
<td>£87,001 to £125,000</td>
<td>D</td>
<td>£450</td>
<td>£320</td>
</tr>
<tr>
<td>£125,001 and above</td>
<td>E</td>
<td>£635</td>
<td>£350</td>
</tr>
</tbody>
</table>

15. There are also a number of fees associated with an application for a licence: for the drawing up of plans of the premises, the production of the required number of copies of the licence application, the placing of newspaper advertisements and signage near the site for which a licence is being applied for and for legal fees if the applicant chooses to have their application considered by a solicitor in advance of submitting it.

16. During the passage of the Licensing Bill, the Government claimed savings of nearly £2 billion would be achieved through its enactment. In evidence to us, the Minister with responsibility for licensing, Gerry Sutcliffe MP, said that he believed that real cost savings had been achieved, both for applicants and local authorities:

“We would say that the costs that were saved were independently audited and we believe that savings have been made. We estimate that to be around £99 million a year.”

17. This contrasts with evidence we were given. Amateur run sports and social clubs consider that costs to them have increased and benefits realised have been minimal. Brigid Simmonds, Chairman of the Central Council of Physical Recreation (CCPR), explained:

“I think it would be difficult to argue objectively that having more local democracy and more involvement with the community was not a good thing; but if you had a licence which only cost £16 and could last for up to 10 years and you are now paying the sort of fees that we are paying it would be difficult to think that this is a streamlined system which is better”.

18. The commercial sector argue that any savings from the simplification of the licensing regime has been eaten away by other requirements flowing from the Act, such as the cost of advertising the licence application and the fact that currently any change to a licensed premises, however minor requires an entirely new licence. There are also a number of ongoing costs which may be conditions of the granting of the licence such as the introduction of CCTV cameras and the provision of security staff.

---

13 HC Deb, 16 June 2003, col 169
14 Q329
15 Q116
16 Ev 76
19. Local authorities themselves believe that, to date, the costs of implementing the new licensing regime exceed the cost recovery by some £100 million.\(^\text{17}\) This view was supported by the Independent Licensing Fees Review Panel chaired by Sir Les Elton, which was set up by the Government to consider the fees regime and reported in January 2007.\(^\text{18}\) It recommended that fee levels for the three years beginning 2007–08 should be increased by 7%, but this recommendation has not been implemented.

20. Despite these concerns, no-one has seriously suggested to us that the new regime should be repealed; most premises and personal licence holders now possess licences, and the cost of this process, to both licence holders and licensing authorities, is largely over. We consider the position of those who provide “portable” entertainment\(^\text{19}\) and for whom premises licences are an ongoing issue, such as circuses, later in our report at paragraphs 100–114.

21. The main concern is that of ongoing costs, which for the majority of licence holders come from two sources: the annual registration fee, and costs arising from a wish to alter a licence. It is these ongoing costs which sporting and not-for-profit clubs feel to be a particular burden. The then Minister with responsibility for licensing, Rt Hon Richard Caborn MP, believed that “the vast majority of sports clubs will fall in a band between about £70 and £100”.\(^\text{20}\) Yet, according to a survey of 2,430 sports clubs by the CCPR, most clubs fall into Fee Band B, for which the premises certificate application fee is £190 and the annual renewal fee is £180, or Band C where the charges are £315 and £295 respectively.\(^\text{21}\) In giving evidence to us the CCPR and Committee of Registered Clubs’ Associations (CORCA) did not claim that it was these fees alone which were causing sports and social clubs to fail. But when combined with other factors, such as the smoking ban, a significant minority of clubs were finding it impossible to stay in operation. The CCPR estimated that approximately 50% of sports clubs were breaking even or making a loss,\(^\text{22}\) and CORCA told us that the majority of its clubs were in difficulties: “I believe it to be true that we are about 80%, struggling—really struggling. More clubs are leaving the union because they are just about to cease.”\(^\text{23}\)

22. These not-for-profit and sporting clubs are dissatisfied that they are increasingly being treated in exactly the same way as commercial ventures, run for profit, despite the obvious differences between them, both in terms of their object and their turnover. A sailing club with an annual bar turnover of approximately £3,500 is charged the same for its licence as a nearby wine bar with turnover in the region of £3,500 per week.\(^\text{24}\) Sports clubs argue that this is particularly unfair in their case as the main purpose of a sporting club is that of undertaking healthy activity not the consumption of alcohol:

---

\(^\text{17}\) Ev 3
\(^\text{19}\) Such as circuses and Punch and Judy shows or one-off outdoor performances by e.g. choirs or morris dancers.
\(^\text{20}\) HC Deb, 11 July 2005, col 545
\(^\text{21}\) Ev 33–4
\(^\text{22}\) Q132
\(^\text{23}\) Q135
\(^\text{24}\) Ibid.
“Sports clubs play a key role in local communities, providing affordable opportunities for people to participate in healthy physical activity. Sports clubs therefore contribute to health and community cohesion. Sports clubs’ bars play a major role in the social and economic viability of many community-based amateur sports clubs. Many of these sports clubs operate a bar only on competition days for use by members and visiting teams and on a relatively small scale. It is the small surplus from bar revenues that helps to keep a club alive, enabling it to invest in new equipment or improve its facilities on behalf of participants.”

23. The CCPR, as the umbrella body which represents sporting clubs, cited to us the precedent of the Community Amateur Sports Club (CASC) scheme. Under this scheme a sports club that registers with the Inland Revenue as a CASC is eligible for 80% mandatory rate relief. The CCPR would like to see such a scheme extended to the licensing regime, as currently it believes that sporting clubs, which are unlikely to cause concerns under the licensing objectives, are in effect subsidising the commercial sector:

“If you are not on the risk register, you are not renewing your licence, the licence goes on in perpetuity, so what are you paying all that money for on an annual basis as a club where you are not causing nuisance and you are not creating crime and disorder? We just do not have those sorts of problems. So you are paying this ongoing annual fee and more fees if you want to make a variation to your licence for really almost nothing in return, and one has to question why that is the case, which is why the CCPR has argued quite comprehensively that the clubs should pay at a much more minor level, effectively as they do as CASCs, which is based on your 80% rate relief which you get if you are a community amateur sports club.”

24. The Government is aware of this issue, and has asked the Independent Fees Review Panel to consider the matter in relation to sports and not-for-profit clubs. The Panel agreed that a case could be made to reduce the fees of those clubs who participated in the Community Amateur Sport Club (CASC) scheme, whereby a sports club that registers with the Inland Revenue as a CASC is eligible for 80% mandatory rate relief. But the Panel did not recommend that this discount should be applied to the licensing regime: “We are however uneasy about recommending this discount. We have no evidence that any amateur sports clubs have actually had to discontinue licensable activity as a result of the current levels of licensing fees”.

25. The Panel was sympathetic to the cost burden on not-for-profit clubs but believed that the best way to address this was through the reduction of administrative burden, by amendment to the Temporary Event Notice scheme and the removal of the need for a Designated Premises Supervisor. “The Minister told us that although he was aware of the ongoing concern of not-for-profit clubs as to the rate of charging for a premises licence he did not think it appropriate to apply a discount: “the difficulty is that we are talking about

25 Ev 33
26 Q117
28 Ibid., paragraph 9.14
alcohol and the subsidising of alcohol”. The Legislative Reform Orders recently brought forward by the Government seek to bring into effect the reductions in administrative burden recommended by the Panel.

26. We note that the Government has previously considered the issue of fees being charged to not-for-profit and sporting clubs for premises licences, and the conclusions of the Independent Fees Review Panel on this matter. We accept that the cost of alcoholic drinks should not be subsidised by the Government. However it seems to us highly unsatisfactory that such clubs, with modest turnover and laudable aims, should be treated in exactly the same way as commercial operations. This is especially so in the case of sports clubs. We recommend that in the case of not-for-profit clubs only the bar area should be taken into account when assessing the rateable value of the premises for the purposes of determining the appropriate licensing fee. We further recommend that all sports clubs, regardless of whether they are registered CASCs, be placed in a fee band based upon 20% of their rateable value.

Opportunities for increased involvement in licensing decisions

27. One of the main changes brought about by the introduction of the Licensing Act is the degree of public involvement in decision-making on licensing applications. Local councillors, rather than magistrates, consider applications for licences to sell alcohol; and the general public has an opportunity to submit views on applications for licences directly to licensing authorities. One of the Government’s key objectives in transferring the alcohol licensing system from the courts to local government was to improve local accountability for licensing decisions.

28. We have received mixed views as to the success of this change. We have heard from local councillors that while applications in residential areas often garner input from local residents, it is much harder to engage potential users of, say, a city centre premises in the licensing process. Equally we have heard from organisations representing musicians who believe that the requirement for public consultation contained in the Act has increased the likelihood that the views of a “vocal minority” will dictate music licensing policy, leading to the cancellation of events such as the summer concerts at Kenwood House in London.

29. The criteria for commenting on a licensing application is that the comment must come from either a “responsible authority” or an “interested party”. A “responsible authority” covers all sorts of persons and bodies, including the relevant chief officer of police, the local fire authority and the local planning authority, but not the licensing committee itself. An “interested party” is defined as being a person either living in the vicinity of the premises or...
involved in a business in that vicinity, or a body representing such persons. Despite this
definition of what constitutes an interested party we have received reports of councils not
taking into account comments of some stakeholders. In evidence to us Object claimed that
some councils operated a “postcode test” and only considered views of residents who lived
very close to a premises which was seeking a licence.35

30. We have received evidence that the views of a small vocal minority can have a
disproportionate sway on a licensing authority. The Musicians Union explained to us that:

“we have seen situations that can only be described as ‘the tyranny of the minority’—
the restrictions imposed by Camden Council on the open-air concerts at Kenwood
are a perfect example. In other cases restrictions have been imposed because one or
two residents have lodged objections to an application from a venue to include live
music in its Premises Licence.”36

31. Another concern is that the public are not encouraged to support licensing
applications, only to object to them. Feargal Sharkey pointed to the fact that a number of
councils actually refer on their websites to the public’s opportunity to comment on
licensing applications as a chance to make an objection:

“When I downloaded the advice sheet from Brighton and Hove’s website to local
residents on how to deal with a representation it reads, “Who can make
representations (objections)? On what grounds may an objection be made? How can
I object most effectively?” At no point in time in the guidance available from the local
authority’s website does it make any indication that you can make a representation in
favour or in support of an application. That is further accentuated by the role of the
Borough of Kensington and Chelsea whose website I checked this morning. The link
on their page actually says, “How to make an objection”.37

32. We welcome the increased opportunities for public involvement in decision making
and encourage local authorities and the Government to make every effort to ensure
that those opportunities are taken up. It is important that local authorities make it
clear that a comment on a licensing application can be in its support as well as an
objection, and ensure that all those with an interest in the application, not just local
residents, are able to comment on it.

Personal Licence Holders

33. One of the requirements of the Licensing Act is that a person who wishes to obtain a
premises licence to sell or supply alcohol must be in possession of a personal licence. To
qualify as a personal licence holder an individual must be over the age of eighteen, possess
a recognised qualification and show the licensing authority that he has not been convicted
of certain offences.38 A personal licence is valid for 10 years, and can be renewed. In

35 Ev 104
36 Ev 89
37 Q235
38 Licensing Act 2003, Part 6
addition a premises must designate a premises supervisor, who must be in possession of a personal licence, in order for it to be allowed to supply alcohol. Every sale of alcohol must be made, or supervised, by a personal licence holder (who may, but does not have to be, the designated premises supervisor).

34. Personal licence holders are liable to have their licence revoked if they commit an offence set out in Schedule Four to the Licensing Act. However we have heard that in reality the lack of a national database for personal licence holders means that it would be possible for a licence holder to commit an offence in a part of the country different to that where they hold their licence and not have their licence revoked. In evidence to us Professor John Howson JP, Deputy Chairman of The Magistrates’ Association, explained the problem to us using the following scenario:

“Somebody can gain a personal licence while studying for a hospitality degree at a university, get a job in the hospitality industry in another part of the country, and then commit an offence under schedule 4 in a third part of the country, and it would be almost impossible for that police force to be able to follow the audit trail through.”

35. It would also be possible for a licence holder whose licence had been revoked to subvert the system by simply applying for another one from a different licensing authority. The Magistrates’ Association suggested to us that either local government or a national regulator should be empowered to create a national database. The Minister told us that the Act contained powers for the Government to create a national database, but in order for it to do so an appropriate business case needed to be made:

“We have been asking for actual evidence of these instances where, because of no national database, people have been able to evade certain things, cases where the police feel this has happened or indeed the local authorities do. Nobody has been able to present any evidence.”

36. We are not convinced by the argument that a lack of evidence that the personal licence system is being abused is a reason not to create a national database of personal licence holders. Indeed without one it seems to us unlikely that such evidence could be proffered. We recommend that the Government should consider how to implement a national database—to allow law enforcement agencies and licensing authorities to share information more effectively—and to consider which would be the most appropriate authority to maintain it, as it will be crucial that any database is kept up-to-date.

39 Licensing Act 2003, section 15
40 Ibid, section 19
41 Ibid, schedule 4
42 Q111
43 Q112
44 Q351
Death of licence holder

37. A further issue relating to personal licences is the difficulty in transferring the licence within the proscribed time following the loss of the personal licence holder named on the premises licence. Currently there is a seven day period in which to apply either for a permanent transfer of the licence,\textsuperscript{45} or for an Interim Authority Licence for a different personal licence holder to take responsibility for running the premises for a defined period.\textsuperscript{46} Failure to take action within the seven day period means that the premises has to cease trading. The British Beer and Pub Association (BBPA) told us of the problems this time limit can cause owners of licensed premises, especially in the case of the death of the licensee:

“The Act only allows seven days and, to be fair, most people are hardly buried within seven days […]. We have had cases of real distress and they are small businesses, Welsh-based particularly, where the licensee died and the business had to shut. The last thing you need when you are burying your beloved is to have your income taken away.”\textsuperscript{47}

38. The Minister acknowledged the difficulty the seven day notification period caused to families who had been bereaved, and it was confirmed that the Government was prepared to look at this issue in the context of the Legislative Reform Orders which it planned to bring before Parliament.\textsuperscript{48} We welcome the Minister’s recognition of the difficulties faced by bereaved families in taking action within the required seven day period following the death of the licensee. We recommend that in such cases the allowable period should be extended from seven to 21 days.

Legislative Reform of the Licensing Act

39. The Government told us that it planned to amend the Licensing Act to remove the requirement for village halls, church halls, chapel halls, community halls and similar community premises to designate a premises supervisor.\textsuperscript{49} The relevant Legislative Reform Order was laid before Parliament on 8 December 2008 and approved by the House of Commons on 23 February 2009. Under the Order, the concept of the supervision of the supply of alcohol is retained, but instead of a personal licence holder the responsibility for authorising sales of alcohol falls on the whole management committee or board of the licensed premises. Providing the management committee holding the premises licence has properly authorised the sale of alcohol, e.g. through a hire agreement, an organisation or hirer using these premises for the sale of alcohol under this authority is not required to obtain a personal licence.

40. The Government believes that this change will remove a barrier to these types of premises, who might previously have struggled to find volunteers willing to take on the
responsibility of being a designated premises supervisor, to applying for a licence to supply alcohol, as well as removing one of the costs associated with the licensing process. **We welcome the Legislative Reform Order, which removes the need for certain volunteer-run premises to designate a specific premises supervisor, but note that there will still be considerable costs and administration involved in obtaining a premises licence for village and community venues. We hope that the Government will consider further ways in which costs and administration can be reduced for such venues.**

41. The Government also tabled a second Legislative Reform Order in relation to the Licensing Act on 8 December 2008. This Order proposed a streamlined procedure for applying to make minor changes to a premises licence, dispensing with the requirements to advertise such proposed changes and the obligation to consult in all cases with “responsible authorities” such as the police and other “interested parties”, such as local residents and businesses. The Government estimated that some 30% of applications to vary are for changes to licensed premises that may be considered minor. The Explanatory Document cites relocation of a bar as an example of a “minor variation”.  

42. The Regulatory Reform Committee is required to examine and report on all draft Legislative Reform Orders proposed by the Government under the Legislative and Regulatory Reform Act 2006. In its Report on the minor variations Order it raised a concern that the requirement for public consultation for minor variations had been removed, and recommended that:

> “when a minor variation is being considered, it should be a requirement that a notice describing the proposed variations be attached to the outside of the premises concerned for a minimum of two weeks. This would provide an appropriate safeguard for local communities whose members might then contact licensing authorities if the matter raised any concerns.”

43. In response to the concerns of the Regulatory Reform Committee the Government withdrew the Order, relaying a revised version on 26 March. This revised version requires minor variations applications to be advertised outside the relevant premises for a period of 10 days and obliges local authorities to consult on the proposal, allowing interested parties to make representations on the likely effect of the variation.

44. Under the proposed minor variations procedure the local authority would have a shortened period of 15 days for considering applications and a reduced, flat fee of £89. There would be no right of appeal, but applicants would be free to submit a full application if their application under the minor variations procedure was rejected. The procedure only applies if “the variation proposed in the application could not have an adverse effect on the promotion of any of the licensing objectives”. Where a plausible case can be made that a variation might have such an impact the application cannot fall within the minor variation provisions and the authority would be obliged to reject it. **We agree that the public should**

---

50 Explanatory Document, page 4, paragraph 14  
52 The Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009, Section 41b
always be involved in decision making and endorse the amendments proposed to the Legislative Reform Order by the Government.

45. We have been made aware of the difficulties in using the current provisions to make minor variations to a licence, with Paul Smith, the Executive Director of Noctis, the trade association for businesses operating in the UK late night economy, claiming that even moving a fire extinguisher would necessitate a fresh licence application: “You can have a situation where you want to move a fire extinguisher, for instance, and because there is no effective minor variations process it will cost you thousands of pounds”. 53 The BBPA also told us of a number of premises which failed to include live music in their licensing applications when moving to the new system, meaning that unless they apply for a new licence, with all the attendant costs and administration, they are no longer able to put on live music performances in their premises.54

46. It is unclear whether the new “minor variations” procedure will make it easier for music to be added to an existing licence, due to conflicting statements within the Explanatory Note which accompanies the Order. On the one hand it states that “the addition of live or recorded music to a licence may impact on the public nuisance objective”.55 On the other it holds that “It is very much the Government’s intention that applications to vary a licence for live music should benefit from the minor variations procedure”.56 We believe that the Government should act to remove this confusion and make it clear that changes to a licence for live music can be made using the minor variations procedure.

47. Much will depend on how this Order is applied in practice by licensing authorities, and where they decide to draw the balance between music as a positive cultural force and music as a source of public nuisance. We welcome any attempt to simplify the process of making a minor variation to a licence and reduce unnecessary costs. However, we are concerned at the apparent contradictions contained within the Explanatory Note, and the wording of the Order itself, which we believe will severely restrict the ability of licensees to take advantage of this procedure for all but the most minimal of variations. The Government must ensure that the discretion it is granting to licensing authorities is a real discretion, and not a power that, in practice, they are unable to use.

Temporary Event Notices

48. Many premises and organisations, especially community groups, rely on Temporary Event Notices (TENs) rather than a premises licence to regulate licensable activities at specific events throughout the year. The maximum number of people who can be at an event regulated under a TEN is 500; the event can last no longer than 96 hours and a minimum of 10 working days notice must be given of the TEN’s use.57 In order to prevent TENs being used when a premises licence is in fact the appropriate licensing vehicle there

53 Q308
54 Q210
55 Explanatory Document, paragraph 8.47
56 Ibid.
57 Licensing Act 2003, section 100
must be a gap of 24 hours between each event applied for by the premises user,\(^{58}\) and there is a limit of 12 TENs per premises per year, with an individual premises user able to apply for a maximum of five of these.\(^{59}\)

**Objection to a TEN**

49. Only the police are able to object to a TEN, on grounds of crime prevention, and they must do so within 48 hours of receipt of notice of the TEN application.\(^ {60}\) If there is no objection from the police then the event can go ahead without any reference to the licensing authority or consideration of the views of the public. We heard from the Association of Town Centre Management,\(^{61}\) the Magistrates’ Association\(^ {62}\) and from the police themselves\(^ {63}\) of the practical difficulties which the police face in considering a TEN application within the statutory timeframe, especially when a weekend forms part of the 48 hour period. Indeed, in oral evidence to us Chief Inspector Studd, representing the Association of Chief Police Officers (ACPO), stated that “the 48-hour response time that the police have is completely inadequate”.\(^ {64}\)

50. We have also heard concern that there is no opportunity for anyone other than the police to have their views taken into account in relation to a TEN, unless the police serve an objection notice in which case the licensing authority must hold a hearing to decide whether to allow the event to go ahead.\(^ {65}\) At no time can the views of the public on the TEN be taken into account. Patrick Crowley, Licensing Manager, Royal Borough of Kensington and Chelsea, also pointed out to us that the grounds of objection to a TEN are more narrowly drawn than for a premises licence:

“The only reason a Temporary Event Notice could go before a licensing committee is if the police feel there are crime and disorder issues. Public nuisance issues are not catered for”.\(^ {66}\)

51. We do not wish to make the process for putting on a temporary event as onerous as that of applying for a permanent premises licence, and as such we believe that the grounds for objection to a TEN should remain narrower than that for a premises licence. However the fact that there is no opportunity for other interested parties to comment on a TEN seems to us to be contrary to the Government’s objective of increasing local involvement in decision making on licensing matters. The Department has highlighted to us that it gets very little correspondence on the subject and a large proportion of TENs are granted to community groups such as Parent Teacher Associations who are involved in low risk

---

\(^{58}\) Licensing Act 2003, section 101

\(^{59}\) Ibid., section 106

\(^{60}\) Ibid., section 104

\(^{61}\) Q18

\(^{62}\) Ev 25

\(^{63}\) Q58

\(^{64}\) Ibid.

\(^{65}\) Licensing Act 2003, section 105

\(^{66}\) Q18
activities from the point of view of the licensing objectives. Nevertheless we recommend that, in addition to the police, councillors, as elected representatives of the public, should be able to object to a TEN, and that the period for such objections should be three working days to allow both the police and councillors time to consider adequately whether they wish to object.

**Control of the TENs system**

52. We received conflicting evidence as to whether the control of the number of TEN events which can be held in any one year, 12 events with a maximum of five notices in the name of any one person, allows a premises to hold too many or too few events. Councillor Geoffrey Theobald, Chair of Local Authorities Coordinators of Regulatory Services, told us that the fact that each of the 12 TENs could be used for a maximum of 96 hours might mean that a premises could “constantly be using Temporary Event Notices” instead of being regulated in a more controlled way.

53. In contrast those representing not-for-profit clubs claimed that they are currently not able to apply for TENs frequently enough and that the restriction on any individual having more than five TENs in any one year was unduly restrictive. In the case of some sporting clubs the need to apply for a TEN 10 days in advance of its use caused problems:

“One of the problems that clubs have, particularly if they are weather-affected, is how do you apply ten days in advance for a Temporary Event Notice if you are affected by the tide or the weather as to whether the event is going to go ahead at all? That is something by which sport is particularly afflicted. If you are a sailing club and you have to wait for the tide on a particular day then it is quite difficult to predict in advance whether it is going to be on this day or that day”.

54. We also heard anecdotal evidence that it is possible to subvert the TENs system through moving the location of a bar in a premises around a room, with Professor Howson of the Magistrates Association telling us:

“The fact is that I could apply for as many Temporary Event Notices as I liked for this room in the course of a year, merely because what I am applying for in terms of alcohol is the sale and not the consumption. I could apply for a Temporary Event Notice for your bit of the room, and, then, when I have exhausted that, move on to another bit of the room, and then to another bit of the room, and have as many as I like.”

When questioned by us however, Andrew Cunningham of DCMS assured us that there is no actual proven evidence of such a practice actually taking place, saying “Anecdotally that

---

67 Q347
68 Q18
69 Qq 122–125
70 Q122
71 Qq 112–114
has been argued many times and nobody has ever actually found somewhere where this has been done successfully".\textsuperscript{72}

55. The issue of the appropriate number of events which could be held under the TENs system was carefully considered by Parliament during the passage of the Licensing Bill.\textsuperscript{73} It was also considered by the Independent Fees Review Panel who recommended in its report that the number of TENs should be increased to 15 in any one year,\textsuperscript{74} a recommendation which has not been implemented by the Government. \textbf{We believe that the time is right for a modest increase in the number of TENs which can be applied for and a relaxation of the number which can be applied for per person.} We are satisfied that, when taken in conjunction with our recommendations above concerning improving the objection process, an increase in the number of TENs per year and the number which an individual can apply for to 15 provides a reasonable balance between meeting the needs of those who use TENs and protecting the public.

\textbf{Cost of applying for a TEN}

56. A large proportion of TENs are applied for by voluntary, community and not-for-profit groups. We have received written evidence from individuals involved in such groups who are concerned that the increase in costs has led to a reduction in the number of community events.\textsuperscript{75} Previously it would have been possible for these groups to have applied for 12 occasional permissions to stage licensable events at a total cost of £10; the TENs system costs £21 for each event, £252 if the maximum of 12 events are applied for in a year, representing a more than 200\% increase. \textbf{We recommend that the Government should consider implementing a reduction in the cost of applying for a TEN in order to lessen the burden on voluntary, community and not-for-profit groups.}

4 The night-time economy

\textbf{Diverse premises}

57. The Government aimed that the Licensing Act should encourage more diversity in the type of licensed premises present on the high street, to give consumers a wider-choice of where and how to spend their leisure time and to encourage a “café society” with more family-friendly premises where younger children could safely be present.\textsuperscript{76}

58. We received mixed views as to whether such changes have actually been delivered. The Government itself, in its evaluation of the impact of the Act, was cautious, citing limited evidence beyond more flexibility in opening times in response to customer demand. It

\textsuperscript{72} Q348
\textsuperscript{73} Q347
\textsuperscript{74} Report of the Independent Fees Review Panel, paragraph 9.23
\textsuperscript{75} [Councillor Marian J Lewis], LI 2; [Gillian Clark], LI 3; [Philip Pover], LI 6; and [Music in the Church at Aust], LI 22—ordered by the Committee to be published, available at www.parliament.uk/cmscom
\textsuperscript{76} “Licensing Bill launched”, Department for Culture, Media and Sport press release, 15 November 2002
concluded that “it may simply be too early for such changes to have fed through”.\textsuperscript{77} Industry trade bodies were more positive about the opportunities created by the Act. For instance the Association of Licensed and Multiple Retailers (ALMR) pointed to the fact that the move to a single premises licence for multiple licensable activities had encouraged the development of hybrid businesses, with adaptable social spaces and providing a number of services (morning coffee, food, alcohol and entertainment) within the same venue.\textsuperscript{78}

59. 

Our assessment is that the major impetus for changes seen in licensed venues appears to have come from consumer choice and market forces. However without the alterations to the licensing regime introduced by the Licensing Act such changes might not have been possible.

\textit{Law and order}

60. The relaxation in rules on licensed premises’ closing hours was introduced both to encourage more diversity of premises, and a corresponding increase in consumer choice, and to reduce alcohol-related public disorder and night-time offences.\textsuperscript{79} Here too there is no consensus in evidence presented to us as to the effects of this relaxation and whether it has had a positive or negative impact, or indeed any impact at all.

61. The abolition of set closing times aimed to reduce late night disturbance in neighbourhoods by staggering customers’ exit from licensed premises. Whilst in theory everything up to 24 hour opening is now possible, the ALMR told us that in practice less than 1% of pubs, bars and clubs hold such licences and only two use them regularly, while one in five pubs still close at 11pm and 80% are closed by midnight.\textsuperscript{80} The Government’s own evaluation concluded that on average on-trade licensed premises were trading for only 21 minutes longer than under previous regimes,\textsuperscript{81} although this represents 10.3 million extra trading hours per year in total for all such premises.\textsuperscript{82} The Government’s submission to us concluded that there was no evidence that the ability to stagger closing hours had in fact reduced late night disturbance at all.\textsuperscript{83}

62. The relaxation of closing times has led to more people going out locally rather than heading to a city centre. This trend has reduced problems caused by the dispersal of large numbers of people concentrated in the specific area of a city centre, but has created challenges for the police in terms of ensuring an appropriate presence in an increasing number of locations. Mr Simon Quin, Chief Executive of the Association of Town Centre Management, used the experience of Leeds as an example of the challenges this can bring:

\begin{flushright}
\textsuperscript{77} Department for Culture, Media and Sport, \textit{Evaluation of the impact of the Licensing Act 2003}, March 2008, p39 \\
\textsuperscript{78} Ev 65 \\
\textsuperscript{79} Ev 130 ff. \\
\textsuperscript{80} Ev 66 \\
\textsuperscript{81} \textit{Evaluation of the impact of the Licensing Act 2003}, March 2008, p13 \\
\textsuperscript{82} Ev 140 \\
\textsuperscript{83} Ev 136
\end{flushright}
“They [the police] are seeing fewer people in central Leeds now on what were traditionally big nights out, like coming out on Good Friday or New Years Eve, because in the smaller suburban centres and the town centres that surround them you have a greater chance now of being able to drink until later. Rather than having the difficulties of trying to get a cab home, or get transport home from the centre of Leeds on one of those nights, people are drinking locally. That has brought its own issues, because previously you were marshalling and dealing with everybody in one location and the police were prepared for it and everything else, but suddenly this is in 20 centres around Leeds and issues can arise in those smaller centres.84

63. More worryingly we have heard both from proprietors of so called “final destination” venues, such as nightclubs and late night bars, and from the police and local authorities, that the problems that can be caused by customers have not diminished but have merely moved to one or two hours later than previously, stretching already limited police resources.85 The Police Federation explained their concerns in written evidence to us:

“the greater flexibility which was introduced by the Act has resulted in a more staggered series of closing times which stretch later into the night/early morning. In the majority of inner city areas this means maintaining a response shift at a higher resilience level (maximum number of officers available to answer calls for service) for a longer period of time. As a result, some officers are now working later shifts. For example, in one force an “afternoon” shift now stretches from 6pm until 4am. Aside from the obvious detrimental effect to the individual officer, this also has a knock-on effect of stretching the resources available to other members of the public that need assistance to the absolute limits. All too frequently our members cannot attend to emergency calls because they are tied up with intervening in pub fights or drunken street brawls.”86

64. Many of the issues faced by proprietors and the police are not attributable to the Licensing Act. There are a number of other factors that it could be argued have had a bigger impact on the night-time landscape, such as the smoking ban, drinks promotions and below cost alcohol sales. Noctis, the trade association for nightclubs and other late night venues, told us that its members had good systems in place to deal with problem customers,87 and that the late night sector had decades of experience in dealing with the challenging behaviour of a percentage of its customers.88 But it cited difficulties with customers who arrived at late night venues “pre-loaded”, sometimes drinking in the queue to get into a nightclub, and were consequently refused entry into the venue.89 Noctis told us that it believed that the increase in consumption of off-trade alcohol, and the increase in below cost selling, had had a marked effect on the difficulties its operators faced.90

---

84 Q34
85 Ev 16, 125
86 Ev 16
87 Q305
88 Ev 125
89 Ev 125 ff.
90 Ibid.
65. The density of licensed premises in certain areas can also be a cause of concern. We have heard of the increase in extremely large pubs in town centres, sometimes holding thousands of customers. These have the potential to cause dispersal problems on their own account even if their closing time is staggered compared to other venues, both in terms of controlling and moving people around and, if disorder breaks out, in getting police officers into them.\footnote{Q59} Equally a number of out of town venues now consist of restaurants, bars, cinemas and nightclubs all in one location, containing large numbers of people and with similar dispersal issues.\footnote{Ibid.} Although the prevention of public disorder is one of the four licensing objectives, and a licensing authority may refuse an application on the grounds that it is necessary to do so in order to promote the licensing objectives, the number of premises already present in any one area is not, of itself, a legitimate objection to a proposed premises licence. \textbf{We recommend that density of venues in a particular area should always be a consideration taken into account by a licensing authority when considering an application for a premises licence, in order to ensure that the police and other authorities are able to adequately ensure the maintenance of public order, and that the Section 182 guidance should be altered to reflect this.}

\textit{Partnership working}

66. The Government told us of “Act’s partnership philosophy” aiming to encourage partnership work between licensing authorities, relevant authorities such as the police and fire service, and the licensees themselves in order to solve licensing problems and promote the licensing objectives.\footnote{Ev 136} Licensees’ groups are encouraged to participate in their local Crime and Disorder Reduction Partnerships, and guidance to the Act makes it clear that a licensing authority has a duty to work with all partners in order to deliver the licensing objectives.\footnote{Section 182 guidance, paragraph 1.20–1.22} A number of authorities hold licensing forums to give all interested parties the chance to discuss licensing issues.

67. Local authorities are also encouraged to develop a Business Improvement District (BID) with local businesses, a partnership arrangement which takes forward schemes that are of benefit to the community in an area, subject to the agreement of business rate payers. A BID is a precisely defined geographical area within which the businesses have voted to invest collectively in local improvements to enhance their trading environment. A BID is initiated, financed and led by the commercial sector, providing additional or improved services as identified and requested by local businesses. The BBPA reported that BIDs are highly successful as they not only positively promoted partnership working but also allowed businesses to tackle the issues that were most important to them.\footnote{Ev 77, Q204} Dr Martin Rawlings, Director of Pub and Leisure at the BBPA, cited to us the success of such an approach if there truly is a partnership approach: “Birmingham, I think, is probably the
prime example here, in Broad Street, who have just put into their report that their offences are down from 3,300 in 2005 to little more than 1,000 this last year”.  

68. We have also heard evidence that BIDs and voluntary Town Centre Management Initiatives are having a positive impact on night-time disorder, through initiatives such as the provision of street wardens and taxi marshals. Simon Quin told us that he believed such initiatives showed the benefits of partnership working and the need for joint responsibility for a location amongst stakeholders: “Discussions happen about things that could be improved in order to achieve recognition, rather than, “You must do that”, and I think that creates a more positive attitude.”

69. Another initiative which is encouraging responsibility amongst bars, pubs and nightclubs is the Home Office’s Best Bar None Awards Scheme. Originally developed as part of the “Manchester City Centre Safe” project in 2001, Best Bar None is designed to provide an incentive for operators to raise management standards. The Awards Scheme rewards the promotion of responsible licensed trade management through the assessment of their success at encouraging socially responsible drinking, their care and protection of customers and reduction of the potential for disorder in town centres and public places arising from alcohol abuse.

70. The Government’s evaluation of the impact of the Licensing Act concluded that:

“There are positive signs that the 2003 Act has encouraged more effective local partnerships to tackle issues. The Scrutiny Councils found that improved partnership working between licensing officers and other enforcement bodies was starting to have a real impact.”

71. We have also heard evidence of the success of the partnership approach. Simon Quin described to us the positive impact of such schemes on licensees: “I think we are seeing much more responsible retailing taking place and a much greater willingness to engage with the police and the local authority on a non-confrontation basis”.

72. We have also been impressed by the success of an initiative led by the retail sector, under the umbrella organisation the Retail of Alcohol Standards Group, to work with local authorities to tackle underage drinking through the introduction of Community Alcohol Partnerships. Piloted in St Neots in Cambridgeshire the scheme sought not just to prevent sales by retailers to underage drinkers but also to understand what led to underage drinking and where that drinking took place. It involved parents, the police, healthcare professionals and schools working together to tackle the problem. This integrated approach was hugely successful and Community Alcohol Partnerships are now being...

---

96 Q204
97 Q11
98 Evaluation of the impact of the Licensing Act 2003, p40
99 Q11
100 Q169 [Mr Beadles]
rolled out in Cambridgeshire, Kent, North Yorkshire and the Isle of Wight, as well as the cities of Reading and Bath.\(^{101}\)

73. Another successful scheme developed by the retail sector in conjunction with local authorities and the police is the “Challenge 21” protocol, whereby those customers who are purchasing alcohol and look under 21 are asked to provide proof that they are over 18. Chief Inspector Adrian Studd of the Association of Chief Police Officers told us “we would encourage Challenge 21. Those sorts of schemes I think are probably as effective as trying to alter the drinking age”\(^{102}\).

74. The development of partnership working is extremely important part of ensuring that the licensing objectives contained in the Licensing Act are achieved. We welcome the efforts made by all involved to develop and maintain successful partnerships and recommend that the Government should continue to promote partnership working as the most effective method to deal with licensing related issues.

**Problem premises**

75. One of the benefits of the current licensing system is the ability to tailor the terms of the licence to the premises in question. Under the previous liquor licensing regime licences were renewed every three years with limited opportunity to intervene in advance of the renewal date. If, at the time of renewal, a premises was felt to be causing a problem, then magistrates had the choice of renewing the licence, perhaps with non-legally enforceable undertakings attached to it, or revoking it. Under the Licensing Act it is possible for the licensing authority to impose conditions at the time of granting the licence, or for an interested party or relevant authority to trigger a review of a licence at the time that the problem occurs, which in turn might lead to the introduction of new conditions on a licence.\(^{103}\)

76. With the exception of certain mandatory conditions, the current licensing regime is designed to allow conditions to be imposed on a case-by-case basis, depending on the issues and problems of a particular case. Examples of the types of conditions which a licensing authority might introduce to a premises licence for a bar include the provision of doorstaff or the installation of CCTV cameras.\(^{104}\) Action can also be taken swiftly to shut down a premises that breaches those conditions.\(^{105}\)

77. However we have also heard of instances where licensing authorities have imposed blanket requirements on a number of premises, contrary to the bespoke principle promoted by the Licensing Act. This seems especially to be the case in the retail alcohol trade, where problems with underage alcohol purchasing or alcohol-related anti-social behaviour has led licensing authorities to seek a solution through the imposition of blanket licensing conditions. James Lowman, Chief Executive of the Association of Convenience

\(^{101}\) Q169

\(^{102}\) Q77

\(^{103}\) Section 182 Guidance, Chapter 10

\(^{104}\) Ev 72

\(^{105}\) Q1
Stores said that not only was this contrary to the Act, but it failed to take account of the facts: “If one store in a town has certain problems it does not mean to say that all the stores in towns have the same problems and should be treated in the same way.”\textsuperscript{106} Such an approach can also have unintended consequences, for instance a decision to ban the sale of high strength beer and cider in Ealing, in order to prevent their sale to homeless people, led to shops in the area being unable to stock most premium ciders and beers.\textsuperscript{107}

78. A final issue highlighted by the convenience store sector was the inclusion by some local authorities in the licensing conditions they imposed on retailers matters which were in fact related to other legislation, such as the Food Safety or Health and Safety Act. Mr Jeremy Beadles, Chief Executive of The Wine and Spirit Trade Association, explained to us why he believed this unreasonably increased the burdens on the retailer:

“I think we would like DCMS to look at whether there are some things that could be ruled out as not really appropriate, including requests for wiring maps as part of the licence application or things under the Food Safety Act and things like that. The problem with including that stuff is it is covered in other regulations already, but also if you include it in a licence application and someone has a problem with something that has gone past its sell-by-date then theoretically they could lose their licence for it. That is not what the licence was for in the first place.”\textsuperscript{108}

79. We agree that it is not appropriate for issues which should properly be regulated by other legislation to be included as licensing conditions on retailers’ premises licences. To devastate a shopkeeper’s livelihood by revoking their licence to sell alcohol due to the presence of an out of date food item in their store is in our view completely disproportionate. We recommend that the Section 182 guidance should be amended to make this clear.

\textit{Drinks promotions}

80. While the vast majority of customers drink responsibly, the consumption of alcohol plays a key factor in fuelling night-time disorder amongst the minority. The Police Federation of England and Wales described Britain’s drinking culture to us as so endemic that excessive consumption was seen as “laudable” and suggested that the best way of tackling this was through the suppliers rather than the drinkers:

“It is our belief that more action needs to be taken to eradicate the cheap deals, “happy hours” and “two-for-one” promotions prevalent in many pubs, clubs, supermarkets and corner shops which encourage binge drinking and contribute to the persistence of alcohol abuse among the young and underage population.”\textsuperscript{109}

\begin{flushright}
\textsuperscript{106} Q175 \\
\textsuperscript{107} Ibid. \\
\textsuperscript{108} Q170 \\
\textsuperscript{109} Ev 16
\end{flushright}
81. On a licensed premises it is illegal to serve a drunk person. Although quantifying what constitutes “drunk” is extremely difficult, licensees are experienced at handling such issues. Issues such as customers “pre-loading”, drinking alcohol purchased from the off-trade before heading out for the evening, and the fact that many will move between licensed premises during an evening means it is not always easy for the police to judge where the problem lies. Indeed the actual disturbance often takes place outside licensed premises.

82. The BBPA explained the difficulty that it faced in trying to regulate drinks promotions as it had found that its actions fell foul of competition law:

“The British Beer and Pub Association three years ago introduced promotions policy which encouraged all its members—which is about 55%–60% of the total pubs’ market in the UK—to debar certain forms of promotion, particularly either speed drinking, i.e. cheap drinks until England score or something like that […]. Or alternatively quantity—£5 and all you can drink, or inviting women in free to encourage consumption […] in November last year I specifically said that we could not maintain that promotions policy without assistance from Government because it was being deemed to be in breach of competition law. The industry in general, the broad body of the church, would like those policies to be maintained, but we have been clearly advised by our lawyers that we cannot continue to do that because it would be deemed to be anti-competitive”.

83. We accept that the vast majority of people who take advantage of drinks promotions such as happy hours and supermarket price deals drink responsibly. The banning of all such promotions seems to us to be disproportionate. Nevertheless if the evidence we have received is true there is clearly a problem which needs to be addressed. It seems absurd that competition law can actually prevent a trade association from attempting to do so through giving its licensees guidelines as to the kind of responsible promotions that should be encouraged. We recommend that the Government should address this problem, if necessary through legislation, as soon as possible.

5 Live music and entertainment

The impact of the Licensing Act on live music

84. At the time of the passing of the Act the Government expressed the hope that it would encourage “the further development within communities of our rich culture of live music,

110 Q183
111 Q191
112 “Off trade” premises are those where the alcohol purchased is consumed off the premises, such as off-licences and supermarkets.
113 Ev 16
dancing and theatre, both in rural areas and in our towns and cities”. The Government set up the Live Music Forum in January 2004 to monitor the situation, to assess the impact of licensing reform on the performance of live music and to make recommendations as to how live music provision could be increased.

85. The Forum published its findings in July 2007, and concluded that the Act had in fact had a broadly neutral effect on the number of venues seeking to put on live performance. In its response to the Forum’s report the Government did not disagree with this conclusion, and it is supported by evidence which we received for this inquiry. In this respect it appears that the Act has not been the success that the Government had expected and hoped for.

86. A more detailed examination of the evidence shows that while the upper and middle end of the live music scene is still flourishing, live music in smaller venues is in fact decreasing. In order to support the work of the Forum DCMS itself commissioned BMRB Social Research to conduct a survey of live music staged in England and Wales in 2007. This research found that there had been a 5% decrease in live music provision in venues whose core business is not the staging of live music, known as “secondary venues”. The music industry believes this is due in part to the operation of the Act, which makes it difficult, costly and administratively time consuming to make live music a part of a licence for premises whose main business is not to provide music.

87. In evidence to us Feargal Sharkey pointed to an increase in very large scale events and a worrying tale off of music being put on at small-scale venues:

“there has been extraordinary growth in large outdoor, large-scale festivals particularly over the last four or five years. That is predominantly making up the advances that were shown by Mintel in their research indicating the volume of ticket sales now. We are quite clearly of the opinion that it has become increasingly burdensome and increasingly difficult for small-scale premises, particularly those whose main activity is not providing live music, i.e. bars, restaurants, that kind of thing”.

88. A number of the venues who now need a licence to host music performance would previously have been able to host small music events without the need for a Public Entertainment Licence, as no licence was required for a non-amplified performance of live music by up to two musicians (the so called “two-in-a-bar rule”). The trade bodies of the beer and pub trade indicated that many did not include music in their application at the

115 Department for Culture, Media and Sport, Government’s Response to the Live Music Forum’s Report, December 2007
116 For instance Ev 90 and Q223
117 Ibid.
118 Department for Culture, Media and Sport, Live Music Forum Research: Live music in England and Wales, December 2007
119 Q224
120 Ibid.
time of transition to the new licensing regime as they felt concerned enough about obtaining a licence without adding extra conditions to it,\textsuperscript{121} and are now put off by the need to either apply for a new licence or a licence variation as both processes are costly and time consuming.\textsuperscript{122}

89. This situation is of concern to all those who want to encourage live music, as smaller and secondary venues are very important to the long term health of the music industry, playing an important part in the development of new artists and minority genres of music and adding to general diversity of cultural entertainment available to the public. The Live Music Forum concluded that it did not believe that the licensing of non-amplified performances for audiences of under 100 people was necessary or proportionate,\textsuperscript{123} a conclusion supported by music industry representatives in evidence to us.\textsuperscript{124} John Smith, General Secretary of the Musicians Union, explained the efforts made by the music industry during the passage of the Bill to gain an exemption for small venues: “We lobbied quite hard on an exemption for small venues and we said with a capacity of up to 200 and it almost got there”.\textsuperscript{125}

90. In contrast representatives of the pub and bar trade told us that they would support the reintroduction of the two-in-a-bar exemption. Nick Bish, Chief Executive, Association of Licensed Multiple Retailers (ALMR), explained:

“ALMR has certainly recommended re-examination of what used to be called the two-in-a-bar rule that disappeared at the time of the Act and we regretted that at the time because our own ALMR benchmarking research has shown that the music expenditure has gone down by 19\% as a proportion of sales, which is an awful lot, and we believe that it is the informality of local entry level music, if you like, in pubs that adds to the type and style of the pub. It calms people down in the context of alcohol; it enlivens them in the context of music, you could say. We miss that and we would strongly urge the Committee to ask that that be revisited in any future amendments.”\textsuperscript{126}

91. Clearly the Government did see a special case for smaller venues who wished to put on music, as Section 177 of the Licensing Act provides for some relaxation of licensing conditions for such venues with a maximum capacity of fewer than 200. However, in practice this exemption is seldom used, with the Musicians Union and Equity holding that the wording of the section and the accompanying guidance notes meant that it was impossible to do so as it was not clear what the section was meant to achieve.\textsuperscript{127} The Government undertook in its response to the Live Music Forum’s recommendations to “explore options for allowing certain low risk live music performances to be exempt from

\begin{itemize}
  \item \textsuperscript{121} Q210
  \item \textsuperscript{122} Ev 67
  \item \textsuperscript{123} Live Music Forum Findings and Recommendations, p15
  \item \textsuperscript{124} Qq 226, 248
  \item \textsuperscript{125} Q226
  \item \textsuperscript{126} Q210
  \item \textsuperscript{127} Ev 88 ff.
\end{itemize}
licensing requirements, in addition to the existing exemption for incidental music.” ¹²⁸ It is currently consulting on a Legislative Reform Order to exempt certain de minimis activities which the Musicians Union and Equity hopes will lead to a firm exemption for venues of under a 200 person capacity. ¹²⁹

92. Clearly something more needs to be done to try to make it easier for smaller and secondary venues to host live music performance, but a balance also needs to be struck between this and ensuring that the four licensing objectives are fulfilled. We recommend that the Government should exempt venues with a capacity of 200 persons or fewer from the need to obtain a licence for the performance of live music. We further recommend the reintroduction of the “two-in-a-bar” exemption enabling venues of any size to put on a performance of non-amplified music by one or two musicians without the need for a licence. We believe that these two exemptions would encourage the performance of live music without impacting negatively on any of the four licensing objectives under the Act.

Music as a public nuisance and disorder issue

93. The linking of the provision of live music with public order issues is a matter of particular concern to the music industry.¹³⁰ In July 2003 Chris Fox, the then President of ACPO, linked live entertainment to public order issues, saying that: “live music always acts as a magnet in whatever community it is being played. It brings people from outside that community and others who come and having no connection locally behave in a way that is inappropriate, criminal and disorderly”.¹³¹ During the passage of the Act it was clear that the Government also regarded music as having a public order dimension, and the Guidance to the Act both encourages local authorities to have due regard to the need to promote live music “for the wider cultural benefit of communities”¹³² and also warns that live music could lead to public order issues.¹³³

94. In contrast to this the situation on the ground seems to be much less clear cut. We have heard scepticism from both the music industry,¹³⁴ and the pub trade,¹³⁵ that music causes anti-social behaviour at all. Local authorities did suggest that live music could contribute to public order issues, but did not see this as a barrier to working with venues to find a solution.¹³⁶ Commander O’Brien of ACPO told us: “I do not think we can see major statistics that would say that a particular venue playing music necessarily brings more
crime and disorder than another venue that has that amount of footfall going through it”.  

95. The music industry also believes that the coming together of the licensing of music with the regimes for the sale and supply of alcohol, and control of crime and disorder has led to a negative perception of the impact of live music and a needlessly authoritarian approach to entertainment licensing in many areas. In written evidence to us British Music Rights cited the difficulties faced by the Moonfest festival:

“The recent case of Wiltshire police, who persuaded magistrates to order the cancellation of the first day of the Moonfest music festival because of fears that the appearance of Pete Doherty would lead to public disorder, shows how the Licensing Act is open to abuse. The Wiltshire constabulary used Section 160, which provides that premises may be closed in an area where there is expected to be disorder, to cancel the show. This last minute court case came weeks after the original application which included security provision had been submitted by the organisers of Moonfest, scrutinised by local Responsible Authorities including the police, and approved”.

96. Feargal Sharkey also pointed to a steady move towards an increasingly authoritarian approach on the part of police authorities, especially the Metropolitan Police, who have asked London licensing authorities to include new conditions for live music events “in the interests of public order and the prevention of terrorism”. The conditions, which are set out in the Metropolitan Police’s Promotion and Event Assessment Form, commonly known as Form 696, include specifying the “musical style” to be performed at live music events and giving the name, address and date of birth of all performers. Mr Sharkey gave an example of a youth concert in aid of a local teenage cancer trust in London which had to be cancelled as the police objected to the granting of a TEN on the grounds that the applicant had not filled out Form 696.

97. Form 696 goes beyond the requirements of the Act itself and its use is in our view beyond even what the Guidance accompanying the Act suggests might be appropriate. Licensing authorities should resist pressure from “interested parties” to impose unreasonable conditions on events. We believe that Form 696 is indeed unreasonable. Such a form goes well beyond the requirements of the Licensing Act, and has a detrimental effect on the performance of live music. We recommend that Form 696 should be scrapped.

98. As discussed above there is little evidence to link the majority of live music performances to public order issues. Music can also be perceived to be a noise nuisance, though research conducted by the Live Music Forum showed that the vast majority of

137 Q94
138 Qq 223, 227–9
139 Ev 151
140 Q238
141 Ibid.
142 Ibid.
actual complaints about noisy music related to neighbours playing their music too loud at parties, rather than music from commercial premises.\textsuperscript{143} Indeed the Forum found that there were more noise complaints in 2006 about burglar alarms and barking dogs than about entertainment premises.\textsuperscript{144} In 2006 the Taylor Report, commissioned by the Department for Environment, Food and Rural Affairs, came to the same conclusions, stating that: “In many Local Authorities, almost all the complaints are about (music from) domestic premises, and it is typical for a Local Authority to have about 90% of their complaints about this source.”\textsuperscript{145}

99. There will of course sometimes be genuine objections from the public about noise or crowds around live music events, and it is important that the public have the opportunity to contribute to the decision making process as to whether to grant a licence, be it through their own representations with regards to a premises licence, or, as we recommend in paragraph 51 above, through representations made by a local councillor on their behalf with regards to a TEN. But while every person has the right to enjoy a peaceful private life, we see no reason why the promotion of culture in general and music in particular should be presumed to interfere with this. Music is in itself a positive thing, which many people enjoy, and which should not automatically be treated as a disruptive activity which will inevitably lead to nuisance and disorder. \textbf{We recommend that the Statutory Guidance to the Act should be reviewed and reworded to remove the overt linkage of live music with public disorder.}

\section*{6 “Portable” entertainment}

100. The evidence that we have received suggests that the Licensing Act works well when licensing entertainment provided in a permanent building. Its success seems to be more mixed when either the premises or the entertainment is portable. Many entertainers, both professional and amateur, have found themselves needing licences for the first time.

101. The position of those providing “portable” entertainment\textsuperscript{146} was discussed during the passage of the Bill, and an exemption introduced for morris dancers.\textsuperscript{147} Cruise ships, which by their nature move from port to port, are able to apply for a premises licence from their home licensing authority.\textsuperscript{148} But there are many other entertainers, both professional, and amateur and community groups, for whom the current licensing regime has proved both confusing and expensive.

\textsuperscript{143} Live Music Forum report, p35
\textsuperscript{144} Q231
\textsuperscript{145} Department for Environment, Food and Rural Affairs, Review of use of noise abatement notices served under Section 80 of the Environmental Protection Act 1990, July 2006, para 4.2.2
\textsuperscript{146} Such as circuses and Punch and Judy shows or one-off outdoor performances by e.g. choirs or morris dancers.
\textsuperscript{147} Section 182 guidance, p108
\textsuperscript{148} Ibid., para 5.11–5.17
Traditional and community activities

102. A number of traditional activities, many of which have been undertaken for centuries without problem, are now caught up in the licensing system. Seasonal entertainments such as travelling plays by mummers and “well dressing”, and outdoor performances by groups such as church choirs, now need a TEN to take place.149

103. Applying for a TEN carries a cost and the number of people who can attend an event under a TEN is also not allowed to exceed 500. A traditional ceremony of well dressing in Derbyshire had to be cancelled as the police objected to it, not on public order grounds but because they felt the crowd following the procession was likely to exceed this limit.150 The number of TENs available to any one organisation is also limited, with a maximum of 12 in a year. In the case of one group of mummers, who had previously performed a play annually for charity in up to 26 pubs, the cost of obtaining eight TENs actually exceeded the amount that they were able to raise for a local air ambulance charity.151

104. The impact of the Licensing Act on these types of traditional, community events seems to us to be directly contrary to the Act’s objective of protecting and enhancing our cultural heritage.152 Such activities are low risk in the context of the four primary objectives of the Act.153 We recommend that the Government should consult on amending the Statutory Guidance to provide an exemption from the licensing regime for low risk activities which add to communities’ cultural life.

Travelling performers

105. We have been told that a number of travelling performers, who historically were not required to hold licences, must now either use the TENs system or gain premises licences for every site that they visit.154 The most high profile example of this is circuses, but Punch and Judy, street theatre and other small variety shows are also affected.155

106. The circus industry has explained clearly to us the difficulties caused by applying a static licensing system, based on licensing a premises, to a moving entertainment. Mr Malcolm Clay, Secretary of the Association of Circus Proprietors of Great Britain, explained to us: “We have been faced with a different premises licence every week for a 40-week season, whereas your local pub or club has one licence application to make”.156

107. We have also heard evidence that there is a lack of consistency amongst licensing authorities. Some believe that they are licensing the circus tent, others the ground on which it will sit. Other licensing authorities have come to the conclusion that circuses are not

149 Qq 236–8
150 Q237
151 Q238
152 Section 182 guidance, paragraph 13.71
153 See paragraph 3
154 Ev 92 ff., Q147
155 Ibid.
156 Q156
licensable at all. This variation in decision making has caused much uncertainty in the industry:

“It is the inconsistency which is the problem because you can go to a town where the licensing officer says, “No, don’t worry. I don’t want an application,” and then perhaps the next week you go seven miles down the road into the next borough and you have to be licensed because the officer is not as flexible”. 157

108. Much of the confusion seems to stem from the fact that a circus per se is not a licensable activity. 158 The Government’s own guidance to licensing authorities makes it clear that it is the inclusion of certain entertainment within a circus performance, involving music and dancing, which might make it licensable. 159 If these activities are merely “incidental” to the main entertainment, then there is no need for a licence. 160 The guidance only suggests that music and dancing is “likely” to be the main attraction on offer at a circus. 161 This means that the licensing officer and authority can use their judgement to decide where the boundary between incidental and integral lies, leaving scope for licensing authorities to come to different decisions regarding the same circus.

109. Circus proprietors have argued to us that there is no good reason for circuses to be included in the licensing regime at all. 162 Only one circus serves alcohol, and as a family entertainment circus performances end relatively early in the evening, and are unlikely to be a source of public disorder. 163 The industry also argues that in many ways they are no different from a travelling fairground, about whom the guidance states: “at fairgrounds, a good deal of the musical entertainment may be incidental to the main attractions and rides at the fair which are not themselves regulated entertainment”. 164 Zippos Circus used an example of a recent performance in Birmingham which took place without music and dancing to contend that such activities are incidental in circuses. 165

110. On balance we believe that it is right for circuses to be part of the licensing regime. However we agree with the circus industry that consultation with them in advance of the Licensing Act was extremely poor. Circuses were initially led to believe that they would not be covered by the Act. 166 By the time circuses were told that it was likely that their performances would be licensable it was too late for proper consultation to take place in advance of the publication of the bill. 167

157 Q151
158 Section 182 guidance, para 10.35
159 Ibid.
160 Ibid.
161 Ibid.
162 Ev 43, 47, Q150; [Circus Development Agency], LI 37—ordered to be published by the Committee, available at www.parliament.uk/cmscom
163 Q156
164 Section 182 guidance, para 10.35
165 Q147 [Burton]
166 Qq 146, 150
167 Ev 44, 53–4
111. The Association of Circus Proprietors estimates that its members have had to apply for over 100 full premises licences for every 3 year touring cycle.\textsuperscript{168} For small mostly family-run businesses this represents a considerable administrative burden. Even the requirement to display prior public notices of the premises licence application can be onerous when the distance between touring locations is considered.

112. If the weather means that a particular site cannot be used, or there is some other unforeseen circumstance, circuses either have to apply for a TEN, with its number restrictions, or travel to a venue for which they do have a valid licence which might be in a completely different city. Mr Martin Burton, Founder Director of Zippo’s Circus, explained the difficulties caused when extreme flooding in Sheffield meant that after travelling from Twickenham Zippo’s Circus was unable to use the park site in Sheffield for which it had a licence:

“Pre licensing what I would have done was I would have phoned up Meadowhall shopping centre and moved my circus from the council park to Meadowhall. It would have required me to alter my advertising at the very last minute, but that is my job and that is my expertise […] However, because of the Licensing Act 2003 we had to turn round. I literally had lorries coming off the motorway onto the slip road and I told them to go back onto the motorway and back to London. The only place we had a premises licence that we could use was for Barnes in London. So we went all the way back to Barnes and opened in Barnes. I have told you how I can re-advertise, but it is one thing to re-advertise the change of location from one part of Sheffield to another, it is another thing to advertise a change in location from Sheffield to Barnes. That caused us real hardship and we lost serious money that week, plus the next venue was Perth in Scotland and the idea of Sheffield was it is half way to Perth. I then drove from Barnes to Perth without a break, which was another extremely expensive exercise”.\textsuperscript{169}

113. Circuses are not the only travelling entertainers to find that complying with the requirements of the Licensing Act has led to complications and expense. Equity told us that TENs are now required for Punch and Judy shows and other small variety shows across the country.\textsuperscript{170}

114. Many of the difficulties about licensing experienced by travelling entertainers could have been avoided if the Government had consulted them appropriately before the implementation of the Act. The Act applies a premises-based licensing system, primarily designed to deal with larger commercial pubs and clubs serving alcohol, to peripatetic, often small scale activities. We recommend that the Government should consult on the possibility of amending Statutory Guidance to exempt some forms of low-risk, small-scale travelling entertainment such as Punch and Judy shows from the requirement to obtain a licence. Where a licence is required we recommend that a portable licence, of the type issued to cruise ships, should be issued by the home authority where the operator is based. In setting the fee level for a portable licence the Government should...
have regard to the fact that operators have already incurred significant costs in applying for premises licences under the current regime.

7 The adult entertainment industry

115. An aspect of the Licensing Act on which we have received many representations is the licensing of lap, table and pole dancing establishments.\(^{171}\) The Home Office has lead responsibility for policy regarding lap dancing and striptease, due to its wider responsibilities for the law in respect of pornography, indecent displays, public indecency and obscenity, but such clubs are currently regulated through a premises licence under the Licensing Act which is sponsored by DCMS.

116. Prior to the implementation of the Licensing Act, lap dancing clubs needed to obtain two licences: a public entertainment licence and a licence for striptease. The changes introduced by the Licensing Act have streamlined the licensing procedure, and brought lap dancing establishments into the same framework as that for bars, public houses and other late night entertainment venues.

117. As with the granting of any premises licence, objections must be founded on one of the four main licensing objectives contained within the Licensing Act.\(^{172}\) The Lap Dancing Association told us that when applying for “regulated entertainment” under a premises licence lap dancing establishments must “state their intention of offering entertainment of an adult nature”.\(^{173}\) Local authorities have increased powers to introduce conditions for the granting of a premises licence. However such “tailored permissions” are no different from those which can be imposed on any premises’ licence.

118. There are no specific provisions within the Act or its guidance to give licensing authorities extra powers to control lap dancing clubs. Nor can objections be made on the grounds of the number of such establishments in an area or the type of activity which will take place within it. The fact that objections to a licence must be founded on one of the four licensing objectives has also led to a feeling of disenfranchisement in those who wish to object to a licence for other reasons. The Cathedral Church of St. Nicholas, Newcastle upon Tyne, wished to object to a licence for a lap dancing establishment to be cited next to a Cathedral choir school attended by seven to 13-year-old children, but this factor could not be taken into account as this was not contrary to the licensing objectives under the Act.\(^{174}\)

\(^{171}\) Hereafter referred to as lap dancing.

\(^{172}\) See paragraph 3

\(^{173}\) Ev 117

\(^{174}\) [Cathedral Church of St Nicholas], LI 11—ordered to be published by the Committee, available at www.parliament.uk/cmscom
Licensing of clubs

119. One of the aims of the Licensing Act was to increase public involvement in decision making on licence applications. Object, an organisation which campaigns against this coupling of lap dancing with the bar and late night entertainment industry, argues that the Act has had the opposite effect in the case of lap dancing establishments. Object told us of the frustration and impotence felt by local residents unable to make representations based on the unsuitability of a lap dancing establishment being located in a particular locality or the number of such clubs in a particular area. We heard that residents who actually wish to object on the grounds that the premises will be a lap dancing club instead have to find other grounds: “parking, noise, anti-social behaviour or, as a recent case in West Kensington showed, the location of toilets”.

120. Although we recognise the concerns as to the nature of activities in lap dancing clubs, all the evidence we have received suggests that such venues are much less likely to cause crime and disorder problems than other late night venues. In oral evidence to us Chief Inspector Studd of ACPO said that he believed such establishments were low-risk from a public order perspective:

“there is no evidence that they [lap dancing clubs] cause any crime and disorder. Very rarely. They tend to be fairly well run and they tend to have a fairly high staff ratio to customers. The people who tend to go there tend to be a bit older, so they do not drink so excessively and cause the crime and disorder problems outside”.

Future control of lap dancing establishments

121. The Government has brought forward clauses in the Policing and Crime Bill, currently before Parliament, which would reclassify lap dancing clubs as “sex encounter venues”. If enacted the bill would create a new class of establishment under the Local Government (Miscellaneous Provisions) Act which already regulates sex shops and sex cinemas. Local councils would be able to set limits on how many clubs could be located in a particular area and would be able to decide to grant no licences at all. Licences would be renewed on an annual basis. However it would not be compulsory for councils to move on to this system, with councils having the discretion to continue to licence lap dancing clubs under the Licensing Act.

122. The Lap Dancing Association rejects the assertion that lap dancing clubs and their dancers are part of the sex industry, instead seeing themselves as “a small but vibrant part of the UK entertainment industry”. It cites the fact that its members do not condone illegal activity and states: “our performers are financially independent, self-employed women. They are not sex workers”. Peter Stringfellow agreed, believing that a move to make lap dancing clubs sex encounter establishments would be “derogatory” to those who

175 Q 250
176 Q64
178 Ev 117
179 Ev 118
We believe that it would be unfortunate if changes in licensing of lap dancing establishments gave the public the impression that such venues offer sex for sale. Such illegal activities are unacceptable and clubs that condone them should feel the full force of the law.

123. In reality lap dancing clubs are a hybrid, and do not fit neatly into either the sex encounter regime or the licensing regime to which they are currently subject. For this reason we do not believe that it is appropriate to treat lap dancing clubs in exactly the same way as sex encounter venues such as sex shops and sex cinemas. Many of the licensing issues relating to lap dancing clubs are the same as those found at any late-night venue: the sale of alcohol, crime and disorder, drunken and anti-social behaviour. Nevertheless a lap dancing establishment is not the same as a pub or nightclub, and interested parties with legitimate concerns should to be able to make representations to the licensing authorities without having to resort to making spurious objections on grounds such as the location of a club’s toilets. We therefore recommend that the Government should bring forward amendments to the Policing and Crime Bill to establish a new class of venue under Schedule 3 of the Local Government (Miscellaneous Provisions) Act. Legislation should make it mandatory for councils to license such establishments under this statutory regime, and not under the Licensing Act.

124. Most lap dancing establishments are well run businesses whose owners have in good faith complied with the law as it stands in order to obtain premises licences for their establishments. It seems to us unreasonable that lap dancing establishments should be required to renew their licence on an annual basis, and unlikely that a club owner would be prepared to make a major capital investment on such a basis. The annual renewal proposal also removes the ability to trigger a review of a licence at any time, an important safeguard for the public and relevant authorities. We recommend that licences for such venues should be granted for a period of five years, with the safeguard that any interested party or relevant authority should be able to request a review of a licence at any time.

125. Both the timing and the cost involved in moving the industry to this new licensing regime will be important factors in its success. The Government has undertaken that lap dancing establishments will be given a “reasonable period” in which to apply for a new licence. We welcome this assurance, and suggest that existing lap dancing establishments in possession of valid premises’ licences should be given a reasonable transition period in which to complete the switch over to the new regime, and that fees for doing so should be limited to cost recovery.
8 Conclusion

126. Broadly speaking the Licensing Act has in our view been a success. Evidence that we have received has shown that the Act has simplified the licensing system bringing together a number of different regimes into one licence. There is also a greater diversity of premises on the high street and the Act’s emphasis on partnership working is welcome. However we believe that our inquiry has shown the benefit of post-legislative scrutiny. There are a number of important respects in which changes and improvements need to be made—in terms of the act itself, its accompanying guidance and its practical application. We hope that the Government will act on our recommendations.

Conclusions and recommendations

1. We recommend that the Government should, in conjunction with local authorities, licence applicants and other stakeholders, evaluate the licensing forms with the aim of making them more user friendly and reducing the level of error. The Government should also remind local authorities that licensing applications containing minor factual errors should be amended not rejected. (Paragraph 13)

2. We note that the Government has previously considered the issue of fees being charged to not-for-profit and sporting clubs for premises licences, and the conclusions of the Independent Fees Review Panel on this matter. We accept that the cost of alcoholic drinks should not be subsidised by the Government. However it seems to us highly unsatisfactory that such clubs, with modest turnover and laudable aims, should be treated in exactly the same way as commercial operations. This is especially so in the case of sports clubs. We recommend that in the case of not-for-profit clubs only the bar area should be taken into account when assessing the rateable value of the premises for the purposes of determining the appropriate licensing fee. We further recommend that all sports clubs, regardless of whether they are registered CASCs, be placed in a fee band based upon 20% of their rateable value. (Paragraph 26)

3. We welcome the increased opportunities for public involvement in decision making and encourage local authorities and the Government to make every effort to ensure that those opportunities are taken up. It is important that local authorities make it clear that a comment on a licensing application can be in its support as well as an objection, and ensure that all those with an interest in the application, not just local residents, are able to comment on it. (Paragraph 32)

4. We are not convinced by the argument that a lack of evidence that the personal licence system is being abused is a reason not to create a national database of personal licence holders. Indeed without one it seems to us unlikely that such evidence could be proffered. We recommend that the Government should consider how to implement a national database—to allow law enforcement agencies and licensing authorities to share information more effectively—and to consider which
would be the most appropriate authority to maintain it, as it will be crucial that any database is kept up-to-date. (Paragraph 36)

5. We welcome the Minister’s recognition of the difficulties faced by bereaved families in taking action within the required seven day period following the death of the licensee. We recommend that in such cases the allowable period should be extended from seven to 21 days. (Paragraph 38)

6. We welcome the Legislative Reform Order, which removes the need for certain volunteer-run premises to designate a specific premises supervisor, but note that there will still be considerable costs and administration involved in obtaining a premises licence for village and community venues. We hope that the Government will consider further ways in which costs and administration can be reduced for such venues. (Paragraph 40)

7. We agree that the public should always be involved in decision making and endorse the amendments proposed to the Legislative Reform Order by the Government. (Paragraph 44)

8. We believe that the Government should act to remove this confusion and make it clear that changes to a licence for live music can be made using the minor variations procedure. (Paragraph 46)

9. We welcome any attempt to simplify the process of making a minor variation to a licence and reduce unnecessary costs. However, we are concerned at the apparent contradictions contained within the Explanatory Note, and the wording of the Order itself, which we believe will severely restrict the ability of licensees to take advantage of this procedure for all but the most minimal of variations. The Government must ensure that the discretion it is granting to licensing authorities is a real discretion, and not a power that, in practice, they are unable to use. (Paragraph 47)

10. Nevertheless we recommend that, in addition to the police, councillors, as elected representatives of the public, should be able to object to a TEN, and that the period for such objections should be three working days to allow both the police and councillors time to consider adequately whether they wish to object. (Paragraph 51)

11. We believe that the time is right for a modest increase in the number of TENs which can be applied for and a relaxation of the number which can be applied for per person. We are satisfied that, when taken in conjunction with our recommendations above concerning improving the objection process, an increase in the number of TENs per year and the number which an individual can apply for to 15 provides a reasonable balance between meeting the needs of those who use TENs and protecting the public. (Paragraph 55)

12. We recommend that the Government should consider implementing a reduction in the cost of applying for a TEN in order to lessen the burden on voluntary, community and not-for-profit groups. (Paragraph 56)

13. Our assessment is that the major impetus for changes seen in licensed venues appears to have come from consumer choice and market forces. However without
the alterations to the licensing regime introduced by the Licensing Act such changes might not have been possible. (Paragraph 59)

14. We recommend that density of venues in a particular area should always be a consideration taken into account by a licensing authority when considering an application for a premises licence, in order to ensure that the police and other authorities are able to adequately ensure the maintenance of public order, and that the Section 182 guidance should be altered to reflect this. (Paragraph 65)

15. The development of partnership working is extremely important part of ensuring that the licensing objectives contained in the Licensing Act are achieved. We welcome the efforts made by all involved to develop and maintain successful partnerships and recommend that the Government should continue to promote partnership working as the most effective method to deal with licensing related issues. (Paragraph 74)

16. We agree that it is not appropriate for issues which should properly be regulated by other legislation to be included as licensing conditions on retailers’ premises licences. To devastate a shopkeeper’s livelihood by revoking their licence to sell alcohol due to the presence of an out of date food item in their store is in our view completely disproportionate. We recommend that the Section 182 guidance should be amended to make this clear. (Paragraph 79)

17. We accept that the vast majority of people who take advantage of drinks promotions such as happy hours and supermarket price deals drink responsibly. The banning of all such promotions seems to us to be disproportionate. Nevertheless if the evidence we have received is true there is clearly a problem which needs to be addressed. It seems absurd that competition law can actually prevent a trade association from attempting to do so through giving its licensees guidelines as to the kind of responsible promotions that should be encouraged. We recommend that the Government should address this problem, if necessary through legislation, as soon as possible. (Paragraph 83)

18. We recommend that the Government should exempt venues with a capacity of 200 persons or fewer from the need to obtain a licence for the performance of live music. We further recommend the reintroduction of the “two-in-a-bar” exemption enabling venues of any size to put on a performance of non-amplified music by one or two musicians without the need for a licence. We believe that these two exemptions would encourage the performance of live music without impacting negatively on any of the four licensing objectives under the Act. (Paragraph 92)

19. Licensing authorities should resist pressure from “interested parties” to impose unreasonable conditions on events. We believe that Form 696 is indeed unreasonable. Such a form goes well beyond the requirements of the Licensing Act, and has a detrimental effect on the performance of live music. We recommend that Form 696 should be scrapped. (Paragraph 97)

20. We recommend that the Statutory Guidance to the Act should be reviewed and reworded to remove the overt linkage of live music with public disorder. (Paragraph 99)
21. We recommend that the Government should consult on amending the Statutory Guidance to provide an exemption from the licensing regime for low risk activities which add to communities’ cultural life. (Paragraph 104)

22. We recommend that the Government should consult on the possibility of amending Statutory Guidance to exempt some forms of low-risk, small-scale travelling entertainment such as Punch and Judy shows from the requirement to obtain a licence. Where a licence is required we recommend that a portable licence, of the type issued to cruise ships, should be issued by the home authority where the operator is based. In setting the fee level for a portable licence the Government should have regard to the fact that operators have already incurred significant costs in applying for premises licences under the current regime. (Paragraph 114)

23. We believe that it would be unfortunate if changes in licensing of lap dancing establishments gave the public the impression that such venues offer sex for sale. Such illegal activities are unacceptable and clubs that condone them should feel the full force of the law. (Paragraph 122)

24. We therefore recommend that the Government should bring forward amendments to the Policing and Crime Bill to establish a new class of venue under Schedule 3 of the Local Government (Miscellaneous Provisions) Act. Legislation should make it mandatory for councils to license such establishments under this statutory regime, and not under the Licensing Act. (Paragraph 123)

25. We recommend that licences for such venues should be granted for a period of five years, with the safeguard that any interested party or relevant authority should be able to request a review of a licence at any time. (Paragraph 124)

26. We welcome this assurance, and suggest that existing lap dancing establishments in possession of valid premises’ licences should be given a reasonable transition period in which to complete the switch over to the new regime, and that fees for doing so should be limited to cost recovery. (Paragraph 125)
Draft Report (The Licensing Act 2003), 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 126 read and agreed to.

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

Ordered, That the Chairman do make the Report to the House.

Written evidence, reported to the House on 28 October, 11 November 2008, 9 December 2008, 27 January 2009, 10 March 2009 and 21 April 2009, was ordered to be printed with the Report.

Written evidence was ordered to be reported to the House for placing in the Library and Parliamentary Archives.

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

[Adjourned till Tuesday 5 May at 10.15 am]
Witnesses

Tuesday 14 October 2008

Councillor Chris White, Chair of LGA Culture, Tourism and Sport Board,
Councillor Geoffrey Theobald, Chair of Local Authorities Coordinators of
Regulatory Services, Mr Patrick Crowley, Licensing Manager, Royal Borough of
Kensington and Chelsea and Mr Simon Quin, Chief Executive, Association of
Town Centre Management

Commander Simon O’Brien and Chief Inspector Adrian Studd, Association of
Chief Police Officers, Mr Simon Reed and Mr George Gallimore, Police
Federation of England and Wales

Mrs Cindy Barnett JP, Chairman, and Professor John Howson JP, Deputy
Chairman, The Magistrates’ Association

Tuesday 28 October 2008

Mrs Brigid Simmonds OBE, Chairman, Central Council of Physical Recreation, Mr
Kevin Smyth, Secretary, Committee of Registered Club Associations and Mr
Barry Slasberg, of Kingsley Park Working Men’s Club

Mr Malcolm Clay, Secretary, Association of Circus Proprietors of Great Britain and
Mr Martin Burton, Founder and Director, Zippos Circus

Mr James Lowman, Chief Executive, Association of Convenience Stores, and Mr
Jeremy Beadles, Chief Executive, The Wine and Spirit Trade Association

Tuesday 11 November 2008

Mr Rob Hayward, Chief Executive, Dr Martin Rawlings, Director of Pub and
Leisure, British Beer and Pub Association, Mr John McNamara, Chief Executive,
British Institute of Innkeeping and Mr Nick Bish, Chief Executive, Association of
Licensed Multiple Retailers

Mr Feargal Sharkey, Chairman, Live Music Forum, Mr John Smith, General
Secretary, Musicians’ Union, and Mr Stephen Spence, Assistant General Secretary
(Live Performance), Equity

Tuesday 25 November 2008

Ms Sandrine Levêque, Advocacy Officer, Object and Ms Nadine Stavonina de
Montagnac, screenwriter, journalist, artist and former lap dancer

Mr Peter Stringfellow, Club Owner, Ms Kate Nicholls, Secretary, Mr Simon
Warr, Chairman and Mr Chris Knight, Vice-Chair, Lap Dancing Association

Mr Paul Smith, Executive Director and Mr Jeremy Allen, Legal Director, Noctis

Gerry Sutcliffe MP, Minister with Responsibility for Licensing, Mr Stuart Roberts
and Mr Andrew Cunningham, Department for Culture, Media and Sport
## List of written evidence

<table>
<thead>
<tr>
<th></th>
<th>Organization</th>
<th>Evidence</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Local Government Association and LACORS</td>
<td>Ev 1</td>
</tr>
<tr>
<td>2</td>
<td>Association of Chief Police Officers (ACPO)</td>
<td>Ev 14; 25</td>
</tr>
<tr>
<td>3</td>
<td>Police Federation of England &amp; Wales</td>
<td>Ev 15</td>
</tr>
<tr>
<td>4</td>
<td>The Magistrates’ Association</td>
<td>Ev 25</td>
</tr>
<tr>
<td>5</td>
<td>CCPR</td>
<td>Ev 33</td>
</tr>
<tr>
<td>6</td>
<td>Committee of Registered Clubs Association (CORCA)</td>
<td>Ev 36</td>
</tr>
<tr>
<td>7</td>
<td>Association of Circus Proprietors of Great Britain</td>
<td>Ev 43; 53</td>
</tr>
<tr>
<td>8</td>
<td>Zippo’s Circus</td>
<td>Ev 47</td>
</tr>
<tr>
<td>9</td>
<td>Association of Convenience Stores</td>
<td>Ev 55</td>
</tr>
<tr>
<td>10</td>
<td>Wine and Spirit Trade Association (WSTA)</td>
<td>Ev 59</td>
</tr>
<tr>
<td>11</td>
<td>Association of Licensed Multiple Retailers (ALMR)</td>
<td>Ev 65</td>
</tr>
<tr>
<td>12</td>
<td>British Beer and Pub Association (BBPA)</td>
<td>Ev 69</td>
</tr>
<tr>
<td>13</td>
<td>Musician’s Union (MU)</td>
<td>Ev 88</td>
</tr>
<tr>
<td>14</td>
<td>Equity</td>
<td>Ev 92</td>
</tr>
<tr>
<td>15</td>
<td>Object</td>
<td>Ev 103</td>
</tr>
<tr>
<td>16</td>
<td>Peter Stringfellow</td>
<td>Ev 114</td>
</tr>
<tr>
<td>17</td>
<td>Lap Dancing Association (LDA)</td>
<td>Ev 116; 124</td>
</tr>
<tr>
<td>18</td>
<td>Noctis</td>
<td>Ev 125</td>
</tr>
<tr>
<td>19</td>
<td>Department for Culture, Media and Sport (DCMS)</td>
<td>Ev 130</td>
</tr>
<tr>
<td>20</td>
<td>British Music Rights</td>
<td>Ev 150</td>
</tr>
<tr>
<td>21</td>
<td>The European Entertainment Corporation</td>
<td>Ev 152</td>
</tr>
<tr>
<td>22</td>
<td>Westminster City Council</td>
<td>Ev 153</td>
</tr>
<tr>
<td>23</td>
<td>Business In Sport and Leisure Limited</td>
<td>Ev 156</td>
</tr>
</tbody>
</table>

## List of unprinted evidence

The following memoranda 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 Parliamentary Archives, and are available to the public for inspection. Requests for inspection should be addressed to The Parliamentary Archives, Houses of Parliament, London SW1A 0PW (tel. 020 7219 3074). Opening hours are from 9.30 am to 5.00 pm on Mondays to Fridays.

| LI 1 | Torbay Council                          |
| LI 2 | Cllr Marian J Lewis                     |
| LI 3 | Gillian Clark                           |
| LI 4 | Tony Bartlett                           |
| LI 5 | Swindon Borough Council                 |
| LI 6 | Philip Pover                            |
| LI 8 | Bowmoor Sailing Club                    |
| LI 10| National Association of Choirs          |
| LI 11| Cathedral Church of St Nicholas         |
LI 12 Historic Houses Association
LI 13 Milton Keynes Council
LI 14 CAMRA
LI 15 British Hospitality Association
LI 16 Mr and Mrs R Price
LI 17 British Resorts and Destinations Association
LI 19 Bournemouth Area Hospitality Association
LI 22 Music in the Church at Aust
LI 23 Jazz Services Ltd
LI 24 Jason Lunn
LI 25 Roger Gall
LI 28 City of London
LI 30 Hamish Birchall
LI 32 David Berry
LI 35 Action with Communities in Rural England
LI 36 Punch Taverns Plc
LI 37 Circus Development Agency
LI 38 Alison Macfarlane
LI 39 Alcohol Concern
LI 44 Tourism Alliance
LI 49A Wine and Spirit Trade Association
LI 50 Cllr David Butt
LI 53 Peter Luff MP
LI 60 The Event Services Association
LI 62 Hamish Birchall, Dr Susan Mallett and Alison Macfarlane
LI 66 Philip Doyle
LI 67 Roger Gall
LI 68 UK Music
LI 69 Judith Bramley
LI 70 Dr Peter Cripps JP, Secretary, Glosfolk
LI 71 British Naturism
LI 72 A R Cook
LI 76 Rt Hon Tessa Jowell MP
LI 77 Hamish Birchall
LI 78 Cllr David Pearson
LI 79 Flash Company
### List of Reports from the Committee during the current Parliament

**Session 2005–06**

<table>
<thead>
<tr>
<th>Report Type</th>
<th>Title</th>
<th>Report Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>First Special Report</td>
<td>Maritime Heritage and Historic Ships: Replies to the Committee’s Fourth Report of Session 2004–05</td>
<td>HC 358</td>
</tr>
<tr>
<td>First Report</td>
<td>Broadcasting Rights for Cricket</td>
<td>HC 720</td>
</tr>
<tr>
<td>Second Report</td>
<td>Analogue Switch-off</td>
<td>HC 650 I, II</td>
</tr>
<tr>
<td>Third Report</td>
<td>Preserving and Protecting our Heritage</td>
<td>HC 912 I, II, III</td>
</tr>
<tr>
<td>Fourth Report</td>
<td>Women’s Football</td>
<td>HC 1357</td>
</tr>
<tr>
<td>Second Special Report</td>
<td>Women’s Football: Replies to the Committee’s Fourth Report of Session 2005–06</td>
<td>HC 1646</td>
</tr>
</tbody>
</table>

**Session 2006–07**

<table>
<thead>
<tr>
<th>Report Type</th>
<th>Title</th>
<th>Report Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>First Report</td>
<td>Work of the Committee in 2006</td>
<td>HC 234</td>
</tr>
<tr>
<td>Second Report</td>
<td>London 2012 Olympic Games and Paralympic Games: funding and legacy</td>
<td>HC 69 I, II</td>
</tr>
<tr>
<td>Third Report</td>
<td>Call TV quiz shows</td>
<td>HC 72</td>
</tr>
<tr>
<td>Fourth Report</td>
<td>Call TV quiz shows: Joint response from Ofcom and ICSTIS to the Committee’s Third Report of Session 2006–07</td>
<td>HC 428</td>
</tr>
<tr>
<td>Fifth Report</td>
<td>New Media and the creative industries</td>
<td>HC 509 I, II</td>
</tr>
<tr>
<td>Sixth Report</td>
<td>Caring for our collections</td>
<td>HC 176 I, II</td>
</tr>
<tr>
<td>Seventh Report</td>
<td>Self-regulation of the press</td>
<td>HC 375</td>
</tr>
<tr>
<td>First Special Report</td>
<td>Self-regulation of the press: Replies to the Committee’s Seventh Report of Session 2006–07</td>
<td>HC 1041</td>
</tr>
</tbody>
</table>

**Session 2007–08**

<table>
<thead>
<tr>
<th>Report Type</th>
<th>Title</th>
<th>Report Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>First Report</td>
<td>Public service content</td>
<td>HC 36 I, II</td>
</tr>
<tr>
<td>First Special Report</td>
<td>Public service content: Response from Ofcom to the Committee’s First Report of Session 2007–08</td>
<td>HC 275</td>
</tr>
<tr>
<td>Second Report</td>
<td>Ticket touting</td>
<td>HC 202</td>
</tr>
<tr>
<td>Third Report</td>
<td>Work of the Committee in 2007</td>
<td>HC 234</td>
</tr>
<tr>
<td>Fourth Report</td>
<td>BBC Annual Report and Accounts 2006–07</td>
<td>HC 235</td>
</tr>
<tr>
<td>Fifth Report</td>
<td>On-course horserace betting</td>
<td>HC 37</td>
</tr>
<tr>
<td>Second Special Report</td>
<td>On course horserace betting: Government Response to the Committee’s Fifth Report 2007–08</td>
<td>HC 549</td>
</tr>
<tr>
<td>Sixth Report</td>
<td>London 2012 Games: the next lap</td>
<td>HC 104 I, II</td>
</tr>
<tr>
<td>Seventh Report</td>
<td>European Commission White Paper on Sport</td>
<td>HC 347</td>
</tr>
<tr>
<td>Third Special Report</td>
<td>European Commission White Paper on Sport: Government Response to the Committee’s Seventh Report 2007–08</td>
<td>HC 1029</td>
</tr>
<tr>
<td>Eighth Report</td>
<td>Tourism</td>
<td>HC 133 I, II</td>
</tr>
<tr>
<td>Ninth Report</td>
<td>Draft Cultural Property (Armed Conflicts) Bill</td>
<td>HC 693</td>
</tr>
<tr>
<td>Tenth Report</td>
<td>Harmful Content on the Internet and in Video Games</td>
<td>HC 353 I, II</td>
</tr>
<tr>
<td>Eleventh Report</td>
<td>Draft Heritage Protection Bill</td>
<td>HC 821</td>
</tr>
</tbody>
</table>
### Session 2008–09

<table>
<thead>
<tr>
<th>First Report</th>
<th>Pre-appointment hearing with the Chairman-elect of Ofcom, Dr Colette Bowe</th>
<th>HC 119</th>
</tr>
</thead>
<tbody>
<tr>
<td>[First Joint Report with the Business and Enterprise Committee]</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Second Report</td>
<td>Work of the Committee 2007–08</td>
<td>HC 188</td>
</tr>
<tr>
<td>Third Report</td>
<td>Channel 4 Annual Report</td>
<td>HC 189</td>
</tr>
<tr>
<td>Fourth Report</td>
<td>BBC Annual Report and Accounts 2007–08</td>
<td>HC 190</td>
</tr>
<tr>
<td>First Special Report</td>
<td>Unauthorised Disclosure of Heads of Report</td>
<td>HC 333</td>
</tr>
<tr>
<td>Fifth Report</td>
<td>BBC Commercial Operations</td>
<td>HC 24</td>
</tr>
</tbody>
</table>
Oral evidence

Taken before the Culture, Media and Sport Committee

on Tuesday 14 October 2008

Members present

Mr John Whittingdale, in the Chair
Janet Anderson Alan Keen
Philip Davies Mr Adrian Sanders
Paul Farrelly Helen Southworth
Mr Mike Hall

Memorandum submitted by the Local Government Association and LACORS

KEY MESSAGES

— Councils have been successfully implementing the Licensing Act since its introduction and have used it to pursue their licensing objectives. Much of the new legislation works. However, there are areas where it can be improved.

— The Government should reimburse the £102 million implementation costs currently borne by council tax payers. It should also, as a matter of urgency, respond to the 2007 Elton report. Councils believe the administration of the Licensing Act should be moved onto an audited, but genuine, cost recovery basis.

— The DCMS should cut red tape, initially by moving to implement its own Licensing Act simplification plan. It should also consider further measures to remove administrative burdens and support local flexibility.

— Councils are community leaders with a duty to tackle crime and disorder. As such they should be able to intervene on crime and disorder prevention grounds in the awarding of Temporary Events Notices.

— Licensing authorities should have the power to suspend licenses where annual licensing fees are not be paid. This power would be comparable to that available under the Gambling Act 2005.

Q1—Has there been any change in levels of public nuisance, numbers of night-time offences or perceptions of public safety since the Act came into force?

1. In spring 2008, the LGA surveyed one in seven councils, half of police authorities and just under a third of all Primary Care Trusts (PCTs) as part of an analysis of the implementation of the Licensing Act. The surveyed authorities, report that the Act has simplified and improved licensing processes. It has also contributed significantly to closer public sector working with, for example, a third of councils now working more closely with their PCTs.

2. Further results from this survey show:

   — Between 20% and 25% of each kind of organisation considered that alcohol-related disorder had reduced as a result of the implementation of the 2003 Act.

   — Between 66% and 75% of each category of organisation perceived either an increase or no change in alcohol-related incidents since the implementation of the Act.

   — Specifically, 10% of police authorities and 4% of local authorities reported an increase in alcohol-related incidents since the implementation of the Act.

   — More alarmingly, however, 29% of PCTs reported an increase in alcohol-related incidents.

3. A majority of councils, police authorities and PCTs therefore report that the Licensing Act has not contributed to an improvement in alcohol-related disorder incidents. If the Act was ever conceived as a single solution to alcohol-related disorder and health issues, it has failed to meet that objective.

4. The Government’s policy objectives for alcohol-related disorder would be best met by facilitating closer public sector working. This can be achieved by addressing our key recommendations of cutting red tape, meeting the financial burdens incurred by council tax payers and by empowering local authorities to find innovative solutions to the local problems.
5. A further discrete recommendation regards public safety and Temporary Events Notices. Councils are community leaders with a duty—in partnership—to tackle crime and disorder. As such they should be able to intervene on crime and disorder prevention grounds in the awarding of Temporary Events Notices. Currently only the police are allowed to make such interventions.

6. A related public nuisance issue can also be seen in the increased numbers of crowds gathering outside licensed premises to smoke, following the Smokefree legislation of 2007. Although currently untested, councils are unlikely to be able to use statutory nuisance powers under the Environmental Protection Act (1990) and powers under the Noise Act (1996) to address noise created by such crowds. It is therefore important that councils can be confident in using the licensing regime. The Licensing Act supplementary guidance seeks to express (at paragraph 7.40) that Licensing Authorities can have regard to potential as well as actual public nuisance. This is a helpful tool in addressing such issues. However, the current wording of the guidance is unclear given the common law definition, and we recommend that it is amended, following consultation with councils.

Q2—The impact of the Act on the performance of live music

7. The LGA/LACORS have not analysed the impact of the Act on specific entertainment sectors. We are aware though that the majority of premises licenses with regulated entertainment include live music as a licensable activity. Overall very few applications for live music have been refused, and we are not aware that the Act has had any significant impact, either positive or negative, relating specifically to live music.

Q3—The financial impact of the Act on Sporting and Social clubs

8. The LGA/LACORS have not undertaken their own analysis of the financial impact of the Act on specific types of licensable premises. The Independent Fees Review (2006) however, found “insufficient evidence” that community and amateur sports clubs had discontinued licensable activities because of the increase in licensing fees following the introduction of the Act.

9. Despite this we are aware of concerns—amongst sporting bodies in particular—that increases in licensing fees divert money from “frontline” sports provision; away, for example, from equipment or coaching services. Local councils are both a central funder and keen advocate of community and amateur sports clubs. They recognise the contribution that such clubs make to levels of public fitness and satisfaction, and to local priorities such as improving public health and fostering social capital.

10. Any licensing fee exemptions for sports clubs, however, would—under the current fee regime—simply add to the financial burden already imposed on council tax payers. Therefore, we again strongly recommend that the DCMS reimburses the costs already incurred by local authorities and seeks to move towards an audited, but genuine, cost recovery basis for its future administration. This should be a prerequisite to any other moves that advantage specific sectors, benefiting—as it would—all local residents.

Q4—Whether the Act has led, or looks likely to lead, to a reduction in bureaucracy for those applying for licenses under the new regime and those administering it

11. Councils welcome the Licensing Act’s existing administrative reforms, which are a positive step towards reducing the burdens of the licensing process. The DCMS’ own simplification plan however notes many continuing administrative burdens. It also contains many welcome potential solutions. However the plan was first issued in 2006, and we have real concerns over the lack of progress made to date. We urge the Department to implement the plan as a priority.

12. We would also like to see the Department go further than those steps set out in the plan. We recommend, for example, that local discretion to award Temporary Events Notices (TENs) after their application deadline has passed should be allowed in cases where the police and the local authority both support this.

13. The Department should also act to lift the resource and financial burdens imposed by its licensing statistical bulletin. Prior to the implementation of the Act in 2005, licensing authorities invested in data collection systems that were appropriate to local needs. In 2007 the Department introduced additional reporting requirements that mean councils must retrospectively, and often manually, sift hundreds of license application. Such data returns are not mandatory, in order to comply with the new central-local performance framework. However, by “naming and shaming” in the final report those councils that do not provide them the Department contravenes the spirit of both the new performance framework and the central-local Concordat.
Q5—Whether the anticipated financial savings for relevant industries will be realised

14. The story of council implementation of the Act is one of financial costs rather than savings. The latest figures collated by LGA and LACORS show that the Act has cost, to date, over £100 million more to implement than the Government expected, and that council tax payers are footing this bill, which is worth nearly £5 for the average council tax payer. In response to the LGA/LACORS 2008 survey, 94% of councils reported an increase in pressure on their resources.

15. The Government’s own report, produced by Sir Les Elton, recommended that councils be reimbursed for £45 million of the costs so far incurred, and that fees should rise immediately by 7%.

16. We strongly recommend, therefore, that the Department should resolve the financial deficit currently borne by council tax payers. This would bring the Act into line with ministerial assurances to Parliament that its implementation would be cost neutral to councils. It should also, as a matter of urgency, respond to the Elton report. This response should seek explanation of the report’s criteria for assessing “justifiable spending”—so that a single assessment of the true costs of the Act’s implementation can be reached.

17. We also recommend further action to resolve the underlying pressure on council resources caused by outdated fees levels. The administration of the Act should be moved away from fixed fees and onto an audited, but genuine, cost recovery basis. Failure to do so will leave council tax payers out of pocket and councils perpetually advocating the review of centrally set fees.

18. The costs borne by councils are further exacerbated by the fact that they can not impose sanctions upon licensees for non payment of annual fees. Many authorities have reported increasing levels of unpaid annual fees. They must wait several years for the debt to accrue to a level sufficient to make the debt recovery process viable. We recommend that the Act be amended to provide the same sanction for non payment of annual fees as that set out in the Gambling Act 2005, which allows authorities to revoke the relevant licence.

SUPPLEMENTARY INFORMATION

LGA and LACORS

19. The Local Government Association (LGA) is a cross party organisation that speaks for over 500 local authorities in England and Wales that spend some £113 billion per annum and represent over 50 million people. The LGA exists to promote better local government.

20. The Local Authorities Coordinators of Regulatory Services (LACORS) provides advice and guidance to councils on regulatory matters, including licensing and gambling. LACORS is part of the LGA Group of organisations that support councils.

Further Information

21. The joint LGA/LACORS report unfinished business: a state of play report on alcohol and the licensing act 2003 is appended to this submission.¹

September 2008

¹ Not printed.
**Witnesses:** Councillor Chris White, Chair of LGA Culture, Tourism and Sport Board, Councillor Geoffrey Theobald, Chair of Local Authorities Coordinators of Regulatory Services, Mr Patrick Crowley, Licensing Manager, Royal Borough of Kensington and Chelsea and Mr Simon Quin, Chief Executive, Association of Town Centre Management, gave evidence.

Q1 Chairman: Good morning, everybody, my apologies for keeping you waiting. This morning is the first session of the Committee’s new inquiry into the implementation of the Licensing Act 2003 and we are beginning by taking evidence from the Local Government Association and the Association of Town Centre Management. I would like to welcome: Councillor Chris White, Chair of the LGA Culture, Tourism and Sport Board; Councillor Geoffrey Theobald, Chair of Local Authorities Coordinators of Regulatory Services; Patrick Crowley, Licensing Manager, Royal Borough of Kensington and Chelsea; and from the Association of Town Centre Management, the Chief Executive Simon Quin. Perhaps I could begin by asking you to give just a general overview. One of the claims that was made originally during the passage of the Licensing Bill— which I at that time, in a previous capacity, led for the Opposition and I remember well—said that it was going to have a dramatic increase on the quality of life of people living around licensed premises and in town centres. Do you think that generally the Licensing Act has succeeded in achieving that objective?

Councillor White: I think it has been largely neutral with some positive elements. I think the word “dramatic” certainly would not apply. My own direct experience and the experience of the LGA is that there has been a fairly neutral effect. In some cases crime disorder has gone up and in one or two cases it has gone down. Therefore I think the best summary is that it is neutral.

Councillor Theobald: I come from Brighton and Hove and there are aspects, as Councillor White has said, which have led to an improvement; and there are obviously certain disadvantages. There has been an improvement certainly in partnership working. Local councils are able to work with the police, probation and others, and one does have the advantage one can work quickly to close a premises—it was very rigid before. You can apply conditions for door supervisors, cameras and such like, so there is flexibility. People did used to complain that they would go to the theatre and the cinema and the public houses were closed at ten past eleven and they did not have the opportunity to go afterwards; so it has given the flexibility to enable people to go for a drink afterwards. As Chris has said, one thing it has done of course is that it has pushed things later in the night, as it were. I am sure ACPO will tell you this, and I serve on the Sussex Police Authority, instead of many of their problems finishing at midnight, it is now later on at night-time and that does add to resources. As Chris has said, there are certain advantages to the Act and there are downsides, particularly obviously if you are living extremely close to a public house and that public house is opening into the early hours of the morning when previously it closed at ten past eleven.

Q2 Chairman: One of the points which was made during the passage of the Bill was that it would spread the exodus from licensed premises over a longer period; but the counterargument was that actually everybody would leave at the same time and it would just be a time three hours later than previously. Which do you think has happened?

Councillor Theobald: Speaking from Brighton and Hove’s point of view, I would have said it has led to a spread, because not everybody leaves at three or four o’clock in the morning. I think it has led to a spread; but again you will find different circumstances in different parts of the country. In certain areas you will find it is much the same. Where there is not a big club scene, for instance, you will find that the pubs, instead of closing at eleven o’clock, are now closing at twelve o’clock or one o’clock and everyone leaves at that time. I think it would differ in different parts of the country.

Mr Quin: I think I would add that most of what you have heard is reflected from the views of our members as well, but I do think that in the larger cities, certainly where clubs are important, there has been a spread and this has actually led directly to a reduction in antisocial behaviour at two o’clock in the morning as everyone leaves at the same time and goes for the same limited number of taxis. So I think there is a benefit from that. I think the other key thing to add here is that both our members and indeed the evidence that came out in the report published by the Department earlier this year show that actually the overall impact, the overall change that has taken place, is still quite minimal. We are not talking about every town and city finding that every bar and every club is open much later and, therefore, you can look and say, “What’s its impact?” In lots of places clubs and bars still close at the same time as they always closed at; and really it is only certain locations where this has been taken up to any great extent, and there you are seeing some change. I think you are seeing some spread. In terms of quality of life, I think what it has done is provide for those people who wish to drink later, wish to be more in control of their own timetables and their own life, and I think that is something we should be positive about. It is one of the reasons we have always been supportive of the flexibility this legislation brought forward.

Mr Crowley: To cover the whole question, generally speaking, I agree it has been pretty neutral. We still get the same level of complaints from residents. What has increased is the partnership working, and there are many aspects of that to try and resolve problems. In relation to violent crime, it has shifted later. I do not think there has been a reduction in that.

Q3 Janet Anderson: If we could just specifically talk about night-time disorder. There was a recent evaluation of the impact of the Act by the Home Office and the DCMS which found some limited evidence that alcohol consumption had fallen slightly, as well as evidence that crimes involving serious violence might have reduced, although there were more violent crimes occurring in the early
hours of the morning. Do you think that is because people can drink for longer and therefore, say, at two o’clock in the morning they are likely to be more drunk than they would otherwise be and that would account for the increase in the violent crimes at that time of the morning?

Councillor White: I think there is certainly some reason to suppose that. I think you probably need to do more research on individual cases to be absolutely certain. I think also it is worth making a contrast. A lot of people feared that it would get a great deal worse than it was before the legislation was passed; so it is quite remarkable that we are only seeing limited changes of this nature. There has been evidence throughout the world that large amounts of alcohol consumed quickly is more of a problem than the same amount of alcohol consumed more slowly.

Mr Quin: I think we are seeing from some of our members there is evidence that people are going out later, so they are not necessarily drinking for longer, but they are just changing the hours in which they do drink. I think that is possibly a counter to the thought you are suggesting.

Q4 Janet Anderson: It is interesting because Noctis, who describe themselves as “the voice of the night-time economy”, say that they think the scale of below cost alcohol sales is now “enormous” and that people commonly arrive at late-night venues “pre-loaded”. On your point, Simon, about them arriving later, could they have got themselves really tanked-up in advance?

Mr Quin: I think that is certainly the case in some instances. I think what is happening with a lot of that is that is not on licensed premises, where there are some controls; but it is people using off-licences to buy cheap alcohol and drink at home.

Q5 Janet Anderson: I cannot quite see it, but do you think the Licensing Act may have encouraged that kind of pre-loading in some way?

Mr Quin: I am not sure it has. I think the risk here is that we look at the Licensing Act and say it is responsible for all of the changes that have happened. Lots of other things have been going on at the same time. There is an argument that as we sought to reduce cheap drinking in licensed premises what it has meant is that those who do not have as much cash are then drinking at home more cheaply, and perhaps with no controls initially, and then going out later on. That might be a counterargument to the thoughts that we should ban all happy hours and other things.

Councillor White: If you want to get drunk go to a supermarket.

Councillor Theobald: I think it is a big problem—whereby young people in particular go, firstly, to off-licences get cheap drinks and such like and they then go to public houses. I think we should be looking more carefully at off-licences, corner shops and such like, and trying to ensure that these bargain offers are restricted more.

Q6 Janet Anderson: Also in supermarkets. I was told by Asda in my constituency in Rossendale that they will not, for example, sell alcohol beyond a certain time in the evening because they take the view that if people come in for cans of cider, or whatever, in the middle of the night they have only got one purpose in mind. Do you think that more supermarkets should follow that example?

Councillor Theobald: I personally think there are too many off-licences, too many convenience stores, generally available to purchase drink. You do not want to penalise everybody—this is the problem—but you have only got to see there just seem to be more of them than there were previously.

Councillor White: We certainly welcome what Asda are doing and it is something that all supermarkets should look at.

Q7 Janet Anderson: Briefly, what about the smoking ban—do you think that has had an effect. In licensed premises where there is not a secure outside area—and I know this has happened to some of the pubs in my constituency which have not got an outside area where people can smoke and they stand on the pavement—do you think that adds to the general sense of disorder and could, of itself, cause problems?

Councillor White: Yes, it certainly does. I have certainly had complaints from my residents about people standing on the pavement. It is not the standing on the pavement, it is the loud conversations which come with it. I tend to assume that it is, hopefully, a matter of time, if this particular ban works, that fewer and fewer people will smoke and the problem will solve itself—but perhaps I am an optimist!

Mr Quin: I think we are certainly seeing that borne out by the reports from our members as well in terms of the additional nuisance that is caused by people standing on pavements because of the smoking ban; that is not to say I would like to see the smoking ban repealed.

Councillor Theobald: Of course it does add to councils’ costs to investigate noise complaints, and of course the litter outside.

Mr Crowley: It is noise, but it is also glasses, glass, cigarette butts and other litter which we would hope licensees would clear up themselves, but they do not always. As well as that, as you get later into the night the nuisance is obviously worse. Although the same level of noise is happening, there is less noise to hide it in the street. The later you are smoking outside the more chance you have got of disturbing people.

Q8 Helen Southworth: Could I explore a little comments that were being made about “pre-loading”. My understanding is that it is an offence to sell alcohol to an intoxicated person. If somebody is coming in pre-loaded how does that mean they can then buy alcohol on licensed premises and consume it?

Councillor White: Self-evidently. first of all, it is circumstances. If you have had too many then do not go up to the bar and demonstrate you have had too many but get a friend to do it. A very pressed licensee
on a very busy Friday night will not necessarily see that some of the drinks he or she is pouring will be for people already intoxicated.

Q9 Helen Southworth: That is actually a legal responsibility on the licensee, so it is not good enough to say they had not noticed.

Councillor White: No. I am not here to defend licensees but just trying to explain how I perceive that is likely to happen.

Q10 Helen Southworth: In my experience one of the issues I have discovered around this process is that everybody thinks everybody else should do something, and nobody thinks that they have a role to play in it if it is not going well. If it is going well everybody thinks they have had a part to play in it and everybody cooperates to make it work and you then see improvements. One of the things I want to ask you about is how you get that virtuous circle, rather than one that says, “It wasn’t me—it was him”?

Councillor White: There is a missing piece in the legislation and I understand why it is missing; but it is not the role of the licensing authority to initiate a review; it is the role of somebody else, like the police. I think it would be helpful if the legislation were ever to be changed for the licensing authority itself, which often receives the complaints, which is in touch with councillors like me who are talking to residents about it, to be able itself to initiate a review. That gets round the problem you rightly identify of it always being someone else’s problem. It should be the problem principally of the licensing authority. Indeed, the semi-judicial nature of a licensing authority should protect the licensee if that is handled correctly.

Q11 Helen Southworth: The Licensing Act in itself does not appear to be able to work in isolation. It seems to be very heavily dependent on the local cooperation and practice between agencies. How important are things like Business Improvement Districts and Best Bar None in this? Is there a real difference in places that have those sorts of schemes and places that do not?

Mr Quin: Shall I kick off and declare an interest at the outset. We, as ATCM, are responsible for the national BIDs pilot project which introduced Business Improvement Districts into the United Kingdom, supporting the legislation through its passage; and we still administer the national BIDs advisory service, and support the growth of BIDs. I am also a board member of Best Bar None. I think those initiatives have had a part to play. I think the reason we had been so supportive of them was that the night-time economy mushroomed very rapidly and we did not really have the infrastructure and management in place in most locations to deal with that. It was not something the local authorities were equipped to do, or the police were equipped to do, or anybody else was doing. What we looked for were solutions as to how we provided more effective management of that. I think what has happened, what the Licensing Act has done has given a spur to, is this sense of working more closely together—whether it is the police, the local authorities, the street wardens and the premises themselves. Through initiatives like Best Bar None, which is recognising good practice from the on-licence trade, we are seeing a real change happen. I think we are seeing much more responsible retailing taking place and a much greater willingness to engage with the police and the local authority on a non-confrontation basis. Discussions happen about things that could be improved in order to achieve recognition, rather than, “You must do that”, and I think that creates a more positive attitude. As far as BIDs are concerned, both they and voluntary Town Centre Management initiatives are now funding evening economy managers, street wardens in an evening, taxi marshals and other things. The evidence seems to be that they are having a notable impact. Again, it is about creating this sense of joint responsibility for the location and showing that something can be done, and the key problems are being addressed.

Councillor Theobald: We have a BID in our area and it works very well. It employs two wardens to go round during the daytime as well as at night-time. One of our premises won the Bar None Award the first year. I think all these things, to encourage premises to do well, are to be commended. I did say at the very beginning one of the things the Licensing Act has done has led to a very much closer working relationship by all the various agencies. To give you an example, you mentioned something about why are licensees serving people who are intoxicated? Quite often it is when they go outside afterwards that it really hits them in the cold air. It is very important that there are initiatives—and I do not want to keep referring to my one but I am sure it is common in other places—for instance, in one of our leading streets we have a church hall where girls in particular are taken so that they can be looked after before they get into a taxi and go home. Taxi marshalling and all sorts of initiatives afterwards are important but I go back to cost grounds—authorities would like to do more. We have our public safety and our police team working together in the same building and the police would like us to have our environmental health people in there as well but we cannot lose that resource entirely. Again, a lot of this results on costs. As you probably know, despite assurances by ministers from day one that councils’ costs would be reimbursed that has just not happened, despite the Elton Report. We were told they would be reimbursed and it would all be cost-neutral but that has just not happened.

Q12 Helen Southworth: That is one of the benefits of Business Improvement Districts, is it not, that it does allow a contribution to be made from the industry?

Mr Quin: On a voluntary basis until a ballot has taken place of businesses, and if a majority vote in favour to pay a contribution then all businesses have to pay it. It is not just the licensed trade obviously, other businesses are included in it, or can be included. We are particularly grateful that the
legislation was framed as facilitating legislation, rather than particularly prescriptive, because it does allow the variation to suit the local needs.

**Councillor White:** I would not want the impression to be given that it is only in places where you have got BIDs that we are getting this level of cooperation. Licensees know, local authorities know, that this is going to work best where there is close cooperation. In my own district St Albans, where there are Pubwatch schemes, any sensible licensee knows that they do not want drunks coming in, they do not want fines, they do not want a bad reputation and they work with the council on that, and it is largely successful.

**Q13 Mr Sanders:** Is it not the case that actually things are a lot better today than perhaps they were 30 years ago? There was no CCTV then; there were no taxi marshals; there were no community support officers; street lighting was not perhaps as good as it is today; door supervisors were not trained; there was no coordination, or rarely coordination, between licensed premises. In my area you have a safe bus for people; there are also street pastors working; essentially it is a safer environment today than 30 years ago. Or is it that the numbers are bigger today that makes it feel it is less safe?

**Mr Quin:** I think there is merit in both arguments. Undeniably now there is a much better infrastructure provision for all of the kinds of things you have mentioned—including night buses and all sorts of things which help to get people away. I think if you went back as far as 30 years most town and city centres in the UK were practically abandoned after 5.30 at night because they were just retailing centres or working centres; and there might be the odd small corner pub a few old men drank in, but most people drank out in their suburban locations, in smaller town centres, or in pubs close to where they lived. I think the change that happened within that 30-year period was that pubs, bars and clubs came back into town; we became a more successful economy in terms of the amount of money we had available to spend, and this was what developed this sudden growth in the evening and night-time economy, taking on premises that actually interestingly had been abandoned by banks and building societies as they merged. So who knows what may happen in the future? That growth happened in a place where no-one had previously expected it. Certainly from my experience when I was a town centre manager, the police did not really have to patrol the town centre at night because there was no-one there. That was the challenge we had; and that was the period where we had a kind of ten-year chaos, where trade was growing, people were coming in but we had not got the means of putting the management infrastructure in place. I think you are right, now in most places we have and we are managing the issue and it is allowing more people to have a good time and to use their centre for longer, perhaps in a more sustainable way.

**Councillor White:** The question is: would we prefer to be in 1978 or 2008? I think fairly clearly I would prefer to be now for the reasons just given. It is not just a night-time economy. I remember when pubs closed at two o’clock on a Sunday and it was five long hours—and really long hours—before they reopened again, and then they closed again at ten. Sundays were a wretched time in terms of enjoyment. The public, until this legislation came in, felt very helpless. You were dealing with a slightly remote magistrates’ court; there were no roles for councillors; and they now know they can go along and make objections and be heard; and maybe their objections are taken into account and maybe they are not but at least they get a hearing now. I think that gives quite a lot of reassurance to the public.

**Q14 Mr Sanders:** The big difference now of course is the Licensing Act, and the fact that people do have a right to participate in the process. Do you think the public has actually grasped that opportunity to influence decisions on licensing?

**Councillor White:** Possibly not as much as we would like. One of the problems is that it is unclear the degree to which it is right and proper to advertise a new licence or a licensing chain. With a planning application it is very clear that those who are close to it need to be given notice of it; and they can object to the council, attend the hearing and lobby their councillors. With licensing it is not quite like that. The notice goes up and it is of course available in the newspaper. Some councils advertise it and some do not, fearing litigation. I think some clarity there would help. It is not unreasonable for the licensing authority to say quite neutrally, “An application has come in; have a look at it and tell us what you see”, but that is not strictly in the rules.

**Q15 Mr Sanders:** What about using their right to have a say on reviewing a licence? Are the public getting involved in the process of the review of a licence and demanding that changes are made to its conditions?

**Mr Crowley:** One thing I have found from personal experience and experience from London and around the country is that individual residents are loath to start that route. Part of the process is serving a notice on the licence holder. You are putting your head way above the parapet. If you are a close neighbour of that operator there are obviously other issues. This is one of the reasons why I would certainly support the suggestion that licensing authorities can call reviews themselves. Licensing officers are best placed to know the problem premises. Residents have fears about commencing a review process, or even joining in with a review process once it has been brought by someone else.

**Q16 Mr Sanders:** What can be done then to put that right?

**Mr Crowley:** I would suggest allowing licensing authorities to call reviews of licensed premises.

**Q17 Mr Sanders:** Automatically?

**Mr Crowley:** In the same way as they are allowed to under the Gambling Act 2005.
Q18 Mr Sanders: Can I put a contrary position that is happening with Temporary Event Notices. A Conservative councillor in my patch is very, very upset, and quite rightly, that when there is a temporary event licence application he cannot put across the views of the public; only the police are allowed to put across their views to the decision-maker. When I raise this with the police in my area they say they do not like being in that position because they do not feel that is where they should be. Would you like to see a review of Temporary Event Notices so that they too are democratised in the way that licensing applications are?

Mr Crowley: Generally, yes, there is an issue that one of the reasons for Temporary Event Notices is that you only have to give ten working days’ notice; so the extent of input may be limited just by that. The only reason a Temporary Event Notice could go before a licensing committee is if the police feel there are crime and disorder issues. Public nuisance issues are not catered for and I believe public nuisance issues should be catered for.

Councillor Theobald: Temporary Event Notices along with the fees are the two issues and we would certainly like a review. One of the problems is, you put your application in and the police have to comment within 48 hours. If you put that in at a remote police station, which could well be closed, say, late Friday afternoon, they only have 48 hours to respond; and if they have not responded in time then they will get this. This cannot be right and there should certainly be a longer period for the police to be able to comment on this—it is ludicrous. Also it is only the police who can comment on these; and, as Patrick, has just said, we think the local authorities should be able to comment on those as well, and other bodies. Temporary Event Notices can of course also be used 12 times a year for a period of 96 hours. If one works this one out, you can therefore constantly be using Temporary Event Notices so that you are not being regulated in the same way as you would be otherwise. That is another reason why, definitely with Temporary Event Notices, the system with it does need to be reviewed certainly.

Mr Quin: Can I just make a comment on this democratisation and the involvement of people in the licence process. Whilst it is very important in licensed premises in residential locations that local residents have a significant input into that, I think in many town and city centre locations, where the number of residents is quite few, the difficulty is getting the engagement of the potential users of these premises in that process—particularly if they are younger people or they are people coming in from a distance; they may not naturally engage in processes with the local authority. The risk is that a majority view is drowned out by a few local objectors who have a strong case to make. Perhaps one of the reasons we have not seen a greater change with the Licensing Act over the years since it has been in force has been to some extent as a result of this. I look forward over the years to come to see whether we can actually change that process and perhaps be more willing to listen to the views of users of the premises.

Councillor White: That said, having witnessed on many occasions licensing committees operating, the serial complainers are noted. I suppose I would say this, but fair decisions are reached and you can filter this out and form a compromise. The legislation basically is on the presumption that a licence will be granted. Very often the argument is only around the periphery and the loud noises of people who have some axe to grind will normally be discounted by a good licensing committee.

Q19 Chairman: Just following that up, we had a specific example drawn to our attention by the Musicians’ Union of the open air concerts at Kenwood where they argued that a small number of local residents had a disproportionate influence on the council, who then imposed conditions which actually had quite a damaging impact on the whole viability of the event, in terms of the time it had to finish etc. Do you think this is a problem which is now occurring, or is Councillor White right that basically councils are sensible enough to be able to overlook people who are not representative?

Mr Quin: I suspect there are different results in different places. Councillor White is correct in many instances but I do feel the risk is that some of the people—and I know they have the option to be engaged in this process but who are not but then subsequently find a decision has been made that is contrary to what they would desire—feel disenfranchised, and that it is just this small group making a case. Maybe over time the experience of that will make them engage in the process themselves, and you will get submissions from potential users, concert-goers or whatever it might be.

Q20 Chairman: Is the case presumably that councils are going to pay attention to the local residents because the local residents have votes, whereas the people visiting the concert probably are not going to be voters?

Councillor White: I think it would be dangerous to go down that particular route because of the rules as to who can sit on a particular licensing sub-committee. If you are a ward councillor you cannot sit on a sub-committee and there are no whipping arrangements, and indeed there is not political proportionality. Councillors are very good at taking very seriously their judicial roles.

Q21 Janet Anderson: I wonder if we could just pursue this subject of local authority statements of licensing policy. In quite a lot of the evidence we have got there have been complaints about inconsistency between authorities. The British Beer and Pub Association, for example, argues that some local authorities are overly prescriptive and include blanket conditions, which it claims are prohibited by the Act. One of the examples it gives, for example, is that some local authorities might require membership of Pubwatch, which might seem to be a good idea but that that is not required by the Act.
Councillor White, could you tell us what kind of guidance the LGA gives to authorities, and why there should be these consistencies?  
**Councillor White:** I will pass that on to Geoffrey, if you do not mind.  
**Councillor Theobald:** It is a matter for each local authority if they get advice. Obviously you will be challenged, and I think that happened quite early on in a case. A particular authority had a very strong statement and they were challenged and they lost.

**Q22 Janet Anderson:** Was that Canterbury?  
**Councillor Theobald:** Yes. Statements of licensing policies have to go before full councils, and councillors are aware of the fact that if they start producing statements that cannot be supported then they will lose when it comes to committees. They will look at this very, very carefully indeed to ensure that they are following the letter of the law, as it were.  
**Councillor White:** DCMS does give comprehensive guidance. It is an interesting example about Pubwatch, because to some degree we need to have a consistent approach to this. If we think it is good to work in partnership then it does not seem wildly unreasonable to say you should actually work in partnership with the licensees; equally, if you have local government if there are going to be differences between different areas. What is remarkable about licensing practices is how different local authorities actually are. Local authority wards are very different. I live in a ward which has no pubs in it whatever; yet I represent a division which has got some of the largest density of pubs in the country. You get that sort of variation which does need to be reflected in local documents.

**Q23 Janet Anderson:** Could I take you back briefly to the Chairman’s point about Kenwood and the points raised with us by the Musicians’ Union. It does seem, does it not, that a small group of “influential” residents, if I could put it that way, have had an effect on that policy, and the people who get a lot of enjoyment out of the open air concerts at Kenwood have not had a say. Is there any way you think the Act should be amended to make sure that the users are aware—it is a quasi-judicial one. Certainly I know there has been a spat in my local newspaper where a particular home-grown St Albans band felt it was being denied the ability to occupy premises which sold alcohol, and they made the front-page of the local paper. You always squirm with embarrassment to some degree when your council is in that position. Brutal politics also works here rather than necessarily changes in legislation.

**Q25 Helen Southworth:** I also represent an area that has one of the largest density of premises in the county, and my town centre, I have to say, is something which has given me cause for some considerable concern over the years. I have spent a lot of time doing night patrols with the police and meetings with all the various different people. One of the first things I learnt was not to have meetings with people separately, but to get them altogether in the same room so that they could not transfer blame across from each other. From that process I am a very strong supporter of local authorities being able to determine what is needed in a particular area and making sure it happens there. Do you think the Act is strong enough at the moment in terms of allowing local authorities to identify what needs to happen in a local area? I am thinking about things like cumulative impact areas, but also about things like polycarbonate glasses in appropriate places and appropriate timing, not just because of the guide dogs for the blind that have had their feet cut up on mornings when they have been walking round areas, but also because of the time I have spent at the local A&E seeing what has actually happened and what they have been trying to put back together again after a Friday or Saturday night. Do you think the legislation works well enough at the moment considering that a council has already lost a case; or do you think it needs to be looked at again?

**Councillor Theobald:** If I was here in three months’ time I could answer that question better, because in my own authority we have a cumulative impact which has recently been introduced, and we have just turned down (the licensing committee) a particular establishment; but they can of course always appeal to the magistrates’ courts. We have only had three appeals to the magistrates and we have lost all three; one of course was the famous lap dancing club, and I understand the Minister is looking at that issue anyway. At the end of the day you must ensure that your cumulative impact policy will stand up, because you will be challenged on it and you have to justify it, and there is always an appeal to the magistrates’ courts.

**Councillor White:** I think there is a real dilemma about cumulative impact because it is an illiberal concept to say that “You are the next one to apply, so tough. We’ve now put the gate down”. Nevertheless there is a frustration in town centres, and I do not need to tell you as an MP this, about where it does seem that most premises are licensed premises where there is noise and disturbance, vomiting and urinating, and all these other things which are really very antisocial, and the feeling that somebody ought to be able to do something about it. I suspect what we need to do is test whether we can move slightly further along the spectrum. As for polycarbonate
14 October 2008  Councillor Chris White, Councillor Geoffrey Theobald, Mr Patrick Crowley and Mr Simon Quin

Councillor Theobald: I think there is a perception by the public that councils can do more than they can under the Act. In other words, if residents do not want a particular pub to stay open later then the council can stop that; but of course the council has to operate under the licensing objectives and they can only do that. There is a perception that councils could do more when they cannot, because they are tied to the licensing objectives of the Act.

Mr Quin: To me the whole point on this would really be about ensuring that the local authority works with the licensed trade and works with the other interests and the police and, between you, you actually look at how you are managing that environment and addressing the issues that relate to it. In some places very much so—polycarbonate glasses have been an important requirement as part of the Pubwatch and Best Bar None; in others it does not seem to be as much of a problem. Really it is about working in partnership together to make the place attractive, and make the place welcoming to all kinds of people. Again, I think there is a slight presumption that we talk of town centres at night and we think of young people; but actually if you go in the town centre at night there are people of all ages there and some of them are drawn in just because you are not quite sure who was lurking in that shadow down there. This is not the case everywhere yet, but I think we are getting towards it and we are actually looking at how you are managing that.

Councillor White: I think we have to be quite firm on the reference to that policy. It is fine if I am doing the drinking, I think! Cheap alcohol is not the right message. I am sorry to be hair-shirted about it, but where you are basically giving away alcohol you are saying it is fine to drink more than you can. Let us just it was for me—if I bought two glasses I could finish off the entire bottle—I would be in some degree of inebriation after that; reasonably coherent but certainly not able to drive a car. Is that a sensible way for me to be encouraged, to be told that it is alright for me to drink down a bottle of wine more or less on my own? I do not think it is.

Councillor Theobald: I am surprised they can afford that. Is this purely a bar; not a bar and a restaurant?

Q28 Helen Southworth: Briefly, can I give you one example from my constituency. There is a bar called The Bridgewater in Derwent in my constituency where, if you go in and order two large glasses of white wine, you get the rest of the bottle free. Would you include that in an irresponsible promotion; or would you think that is fairly okay?

Councillor White: It is fine if I am doing the drinking, I think! Cheap alcohol is not the right message. I am sorry to be hair-shirted about it, but where you are basically giving away alcohol you are saying it is fine to drink more than you can. Let us just it was for me—if I bought two glasses I could finish off the entire bottle—I would be in some degree of inebriation after that; reasonably coherent but certainly not able to drive a car. Is that a sensible way for me to be encouraged, to be told that it is alright for me to drink down a bottle of wine more or less on my own? I do not think it is.

Councillor Theobald: Absolutely.

Mr Quin: From my side, that comes with the caveat I raised earlier that if all drinks are expensive in licensed premises than that might encourage some people to drink more from off-licences before they actually go to those licensed premises, so you may not actually achieve a uniform improvement.

Q29 Helen Southworth: It is a trendy modern bar/pub. That is what they do: if you order two large glasses of wine you get the rest of the bottle free.

Mr Quin: You are paying for two-thirds of it and you are getting the rest of it. I think the issue is that this is a competitive market; retailers compete by doing sales and other types of things; but maybe what we want to look at is not stopping promotions per se but stopping promotions that are about the provision of alcohol. If you bought two large glasses of white wine and got free olives or free nuts, or something of that kind, that might well be a nice balancing act.

Chairman: I do not think there will be queues around the block!

Q30 Helen Southworth: In terms of those kinds of promotions, do you think they support or undermine policies that say you should not have opened alcohol transported round the town centre? If you have your two glasses of wine and you get the rest of the bottle free you cannot actually carry it anywhere if there is a policy that says you do not have open alcohol around specific parts of the town centre?

Councillor White: I presume they give you the bottle and you take it to your table or wherever you are.

Q31 Helen Southworth: So you drink it?

Councillor White: Yes. I do not think it would make any difference to that policy.
Q32 Helen Southworth: It seems to make quite a difference in terms of how people perceive things. If you give them a sealed bottle of alcohol that you can take away and drink at your own leisure there is a difference from giving something you have to drink there and then. You have to drink it there and then and you are going to consume it.

Councillor Theobald: I think we have said this once or twice in this evidence, but buying cans of alcohol and promotions of those sorts can be just as dangerous because young people can get all these cans.

Q33 Mr Hall: In the evidence we have got in front of us there are only two licensed outlets in the whole of the UK that drink 24 hours a day. Is that correct?

Councillor White: I believe that is correct, yes.

Q34 Mr Hall: The whole concept of this is 24-hour drinking across the whole of the UK but in fact it is two particular pubs in one particular location. My local authority with the police authority produced a paper which is aimed at going back to dispersal from having town centres as a location for drinking and dispersing people back to the communities where they come from so that they drink in their own communities. In this particular strategy they are also trying to make the price an important factor of where people drink, but that would have an impact on the restaurant trade in the town centres in my constituency. I see it as slightly incompatible. Is it feasible to disperse drinking into outlying areas rather than concentrated in town centres?

Mr Quin: I think there is some evidence that has certainly come out of some of the northern cities. I was talking with people in Leeds recently about this. They are seeing fewer people in central Leeds now on what were traditionally big nights out, like coming out on Good Friday or New Years Eve, because in the smaller suburban centres and the town centres that surround them you have a greater chance now of being able to drink until later. Rather than having the difficulties of trying to get a cab home, or get transport home from the centre of Leeds on one of those nights, people are drinking locally. That has brought its own issues, because previously you were marshalling and dealing with everybody in one location and the police were prepared for it and everything else, but suddenly this is in 20 centres around Leeds and issues can arise in those smaller centres.

Q35 Mr Hall: This is primarily aimed at the weekend trade every weekend of the year?

Mr Quin: I am not convinced that you will change that. I think what you may find though is that those people who want to party will still go to the big town centre or the big city centre; but maybe those who are slightly older who were previously only going there because it was a place they could drink a little bit later may stay more locally. I think it is still too early in this whole position to look and say, “Have we achieved all we set out to achieve? Has there been the testing of the flexibility and changes?” Certainly from my side, we have lots of inbound visits from around the world looking at town centre management, because we are the largest organisation in the world; and the consistent message I get when they arrive is they have heard about 24-hour drinking, they come to Westminster and they struggle to drink after eleven o’clock anywhere apart from in their hotel, so they go, “What’s going on?”

Q36 Mr Hall: The other part of the strategy is related to age. Some people are suggesting you should reduce the drinking age to 16. My local authority and police propose you should increase it to 21. Is there any consensus around this? Is it a very controversial area?

Mr Quin: I am not sure there is consensus.

Councillor Theobald: I have a personal view but that has certainly not been canvassed.

Q37 Mr Hall: Would it be possible to increase the drinking age to 21?

Councillor Theobald: They do in the USA.

Councillor White: Only if you want to give a message that drinking is a forbidden fruit. That seems a very good way of doing it.

Q38 Mr Hall: On the process itself, there is an issue that the LGA have said that the new Licensing Act has actually streamlined the position, brought in lots of people networking around it; part of the beer trade have said it is actually a good move; but other people are saying that the new application process is bureaucratic and overbearing. Where are we?

Councillor White: I think simultaneously all are true.

Q39 Mr Hall: Can that be?

Councillor White: It could be better, and indeed we welcome the DCMS’s simplification of the application forms, for instance, which were too long and were paper-based to an on-line application—all these things can help. I think it has been a problem for those bodies which really were not touched by licensing legislation at all in the past like schools. Work needs to be done but, by and large, we are happier where we are now.

Q40 Mr Hall: This concern that it is bureaucratic—is this just in the first-year application and it gets simpler afterwards?

Councillor White: Yes.

Councillor Theobald: Things have changed slightly. It was very, very prescriptive. If you made just one slight mistake you had to go back again.

Q41 Mr Hall: That was my next question. How many of these application forms originally submitted are actually accurate, and how much help do local authorities have to give to applicants to make sure that they get them right in the first go?

Mr Crowley: I did check up on this one beforehand. Ours are running at 65% with mistakes in, of which 30–35—
Q42 Mr Hall: 65% with mistakes?
Mr Crowley: Yes, of which 30–35% of those are filled in by professionals employed by the applicant.

Q43 Mr Hall: How much is this costing local authorities to put right? Is this a burden that really ought to be dealt with?
Mr Crowley: It is a burden but I do understand that DCMS are looking at the application forms and trying to simplify them and we would certainly welcome that.

Q44 Alan Keen: Can I talk about the inconsistencies between different local authorities. We have covered quite a bit of them, I think. Could I ask you: what would you like to change if you were able to put forward one or two suggestions for us? We are in the very early stages of this. We have all got preconceptions obviously because we do tend to drink now and again, different members of the Committee, I am sure, but as experts who are involved in it day-to-day what would you like to see changed to improve things, first of all, on the applications, the administration of bureaucracy?
Mr Crowley: In relation to the application process, simplified forms. In relation to other aspects of the licensing act I would say that licensing authority officers have the ability to apply for a review of a licence. Thirdly, we are suffering significantly with human resources. The fees have not risen at all and we are now losing staff.
Councillor Theobald: The Temporary Event Notices is an important one—to look at that one. There is still a perception out there that it is difficult for local authorities to refuse extensions to the early hours of the morning because the licensing objectives are quite tight. There is that perception, but how you change that is obviously more difficult.
Councillor White: I go back to fees again. We reckon that local government is now out of pocket by £100 million, which obviously is subsidised by cutting back on other services or increasing the Council Tax, and that is £5 a head. We would like a fee system which actually reflects cost. We do not want to make money out of this, but we know for instance a festival like Glastonbury loses that council £50,000 because it manages it really, really well. That cannot be right and it is not what the applicant actually wants either. They welcome the council’s work. Linked to that in terms of cost is that if you do not pay your fee then you can continue to have your licence, so that makes it rather more difficult to collect bad debts. There is nothing better for making people pay a bad debt than knowing they will be out of business next week when they fail to do so—a very simple change to the legislation.
Mr Quin: I would entirely support that latter point. I think the other thing in one way I would like to see is to go back at times to the actual aspirations when this was brought forward, and say that we were trying to create (albeit it got trashed at the time) this concept of café culture. We may not be equipped as Britons necessarily to engage fully in café culture but I think we should think about not just freezing where we are but looking as we go forward how do we take the lessons we have learned, how do we take the new management approach, the new partnership approach and perhaps allow things to develop a little more in certain locations.

Q45 Alan Keen: You have moved us on a long way forward. This is something which I particularly cared about. Going a step further, you are the experts that deal with the bread and butter aspect of it, dealing with the balance between people wanting to enjoy themselves and local residents. Going even further than that, do you find you get engaged by the Department of Health on public health? We know for virtually every disease the figures are tumbling down apart from liver—liver problems in young people are escalating. Do you get engaged by the Department of Health for your advice on this? We are not going back to the 1920s and banning alcohol, and you are the ones who are really quite expert at this. How do we persuade young people particularly not to drink as much without damaging that? Do you get involved or do you feel frustrated that you are not engaged in it by authorities who deal with health?
Councillor Theobald: We take this extremely seriously. We are actually commissioning a health impact assessment. There are 200 deaths every year in Brighton and Hove which are directly attributable to alcohol. The statistics are not very good statistics, if one actually looks at it. We are looking at this very carefully indeed. I think it is very, very important that we look at the health aspect of this.
Mr Quin: I think there are examples across the country in a number of the major cities now. The health authority is working closely with the local authority and with city centre management and others to draw attention to this and then to reach into universities and other places particularly to make awareness of the dangers of binge drinking, particularly, apparent. I guess it will always be a challenge because as we know, we are seeing it with sexually transmitted diseases as well, certain sections of society are not necessarily listening. We have to think perhaps how we engage them in the process so we are not telling them to do something—we are not acting as parents in a way—but we are actually there in a way where they feel that there is a responsibility on them.

Q46 Alan Keen: I think you went on the defensive. I was not accusing you of not doing your job. I was really asking should the Department of Health be doing more to engage with you for your advice, because you do know an awful lot about this?
Councillor White: Some of that happens already because we of course at local levels talk to PCTs and this work goes on, but more must be done to try and make sure there is a better attitude to alcohol in our society. It was interesting that you touched on universities. I heard yesterday of someone who drank themselves to death at a university in this country very recently in the last few days in a freshers’ week. The concept of the freshers’ week is drinking too much, staying up too late and all these other things, which we all felt was a bit of a laugh...
when we were doing it. It is not a bit of a laugh and we have all collectively got to grow up a little in this country otherwise we are not going to get the café culture which I sincerely hope we can start to develop.

Q47 Helen Southworth: What do you think about free tap water in pubs and clubs? Would you like to see it happen? Should this be something we take up nationally?

Mr Crowley: Yes, and to a certain degree it is available generally speaking already if it is asked for. It may not be on display but I know very few licensed premises that will refuse you a glass of water if you ask for it.

Councillor White: I think you would have to go further. One of the reasons why you need water on tap is ecstasy and similar drugs. Whilst we do not approve of that sort of thing, it goes on. If it is not freely available—which probably means on the table and in the loos—then you are going to get people dehydrating themselves to the point of critical illness.

Q48 Alan Keen: In relation to Helen’s question, I often ask, when I am drinking beer and buying a round, for a pint of iced water. I have never been refused and never been charged.

Mr White: I like the Greek habit of water with coffee and I have even been to a Greek place where they brought water with Coca-Cola. It is the healthy way forward but it requires changing hearts and mind.

Q49 Chairman: Can I put to you some submissions we have had regarding the attitude of local authorities to particular forms of entertainment. I do not want to suggest that local authorities are killjoys but it was put to us that some local authorities view the position of live music as essentially creating public order problems and, equally, that they are pretty hostile to the whole concept of circuses. What is your impression of how local authorities view live music and circus performances?

Mr White: Live music is, like anything else which is an attraction in licensed premises, potentially a public order problem. If you start from that point of view, then it becomes clear what you must do. For public order problems, it behoves local authorities to find public order solutions, which is one of the reasons why working in partnership works so well. An instance in my own division is of a pub which caused an enormous problem: there were huge complaints from local residents before the legislation came in, because it was a live music venue, it had a back room especially for it, and all the tribute bands that you could imagine were there and are there. Since there has been better co-operation between that landlord and the licensing authority, the doormen are there, they are enforcing that people do not drink outside after 11 o’clock, they are making sure the doors are closed, and that means that we have a great live music venue—and another one down the road. I think that is the normal attitude of local authorities. Clearly there have been arguments—and we are aware of the report as well—but I would not want you to think there is a general problem in local authorities not approving of live music.

Mr Theobald: On the question of circuses, where the local authority licenses all its parks and such like it is obviously easier. I think the point you are getting at really is that a circus which travels around has to fill out lots of different licences, and maybe one could look at something like a portable licence so that they could be licensed. Certainly in my part of the world, where we do have circuses, they are on council-licensed land, so it is not a problem.

Q50 Chairman: You are not aware of the concern that has been quite widely expressed within the circus industry?

Mr Theobald: I have heard that, and that is why I say—the question of them having to fill out an application everywhere they go can be quite tedious and expensive—perhaps there could be a portable licence of some kind.

Mr White: There needs to be something special, because the legislation is aimed at pubs, clubs and premises which do not move around, and they are different from that.

Mr Crowley: In relation to live music, I have canvassed the London licensing managers and the percentage of live music applications that have been refused over London is absolutely minimal. There is not any sort of feeling in London’s local government that live music is not a good thing.

Q51 Chairman: I think the concern expressed previously was that venues which previously offered live music under the two-in-the-bar rule have not taken up the opportunity to continue by applying for a premises licence.

Mr Crowley: It is not reflected in London.

Q52 Philip Davies: Geoffroy, you mentioned the Elton Report in passing. He proposed a 7% increase fees and a £43 million reimbursement to local authorities. Have you had any indications from the Government that they will look favourably on that report and implement it?

Mr Theobald: I have been led to believe by successive ministers that local authorities would have their costs reimbursed for implementing, that implementing the Act and running it would not cost local authorities it would be fully reimbursed. We then got the Elton Report, where he came forward, as you rightly say, with £43 million and we are still awaiting. We at least assumed, given that this was an independent person who went into this very thoroughly, that that £43 million would come to the local councils and that they would be enabled to increase the fees in the way he said. The difference in costs has now increased, of course, since that time.

Mr White: I have raised this with ministers on a number of occasions. Certainly we are not being rebuffed, and we are told that it is being looked into and something will be done, but that has been over a long period of time now.
Q53 Philip Davies: He talked about increasing the fees, you have talked about increasing fees. Lots of smaller sporting clubs, for example, and other organisations locally, complain to me that the fees already are too high and that it is barely worth their while and they can barely cope with the fee structure as it is. Are you not sympathetic to those smaller community groups who find that the licence fees already are excessive?
Mr Theobald: Yes, but I think you will find that the very big establishments could well be paying less now than they were under the previous regime.
Mr White: Going back to my example of Glastonbury, you are getting the bigger establishments being subsidised by the smaller ones. A fee structure which was a cost-recovery structure and which was capable of being audited as such would be far preferable to all concerned.

Q54 Philip Davies: How does that work? How would anybody know what they were likely to be paying beforehand for their licence if it was on a cost-recovery basis? Would it not be rather excessive, the cost in itself, of auditing it all?
Mr White: What would happen is that the local authority would publish a scale of fees which was its best estimate of how to recover its costs in a particular year and the scheme as a whole would be audited. In other words, you would not be into a guessing game of putting in for a licence and then getting a bill sent from the local authority which was analysed like a solicitor’s bill or something like that. It would be on a scale, and that scale would be reviewed on a regular basis and that review itself would be audited, perhaps on a random basis.

Q55 Philip Davies: Rather than an overall increase in the fees, would it not be better to try to find a way of reducing the costs?
Mr White: We would want to do both, hence some of the suggestions we are making. For instance, debt recovery would reduce the costs quite spectacularly, we believe.
Mr Crowley: I would mention the fee regime under the Gambling Act, where fees are set at a minimum and maximum level and the local authority fixes the fee within that minimum and maximum level according to their own cost recovery. The fees, minimum and maximum, are set by DCMS but the local authority has some discretion within that band.
Mr Theobald: You talk about reducing costs, but bear in mind that there are people out there who say there should be more noise patrols, more enforcement, more partnership working. All these sorts of things do not come cheap, as it were.

Memorandum submitted by the Association of Chief Police Officers (ACPO)

Thank you for the opportunity to attend the Select Committee inquiry into the Licensing Act 2003. I can confirm that as the new ACPO alcohol licensing lead I will be attending to give oral evidence on Tuesday the 14 October at 11.10 am and will be accompanied by Chief Inspector Adrian Studd of the Metropolitan Police’s Clubs and Vice unit.

Having carefully considered the questions posed by the Committee I consider that the first one is of most significance to the police service so most of our submission will be directed towards this. We will, of course, be happy to assist the Committee in any way we can on the day, accepting that some areas to be covered will be outside our area of expertise.

When considering levels of violent crime, disorder and nuisance it is important to consider them in the context of the impact on police resources. When the Licensing Act 2003 was introduced there was no additional funding for police forces to cope with any behavioural or cultural changes brought about by it. The traditional peak time for the type of offences we are considering was between 11.00 pm and 12.00 am, the time most licensed premises closed. In the terms of policing this allowed police managers to run their resources down after midnight so officers could be brought in from 8am the next morning for regular day time activity.

Research into the impact of the Licensing Act 2003 has shown a small but consistent rise for all relevant crimes between 3.00 am and 6.00 am. In relation to more serious violent crime there has been a fall in the overall numbers, however the falls have mainly been in the day time and evening hours, with an increase of 25% between the hours of 3.00 am and 6.00 am. This figure has remained stable since then. The figures for less serious wounding offences show a similar pattern. (source: Home Office)

ACPO considers that overall there are some benefits that have been introduced by the Licensing Act 2003. The review process, while far from perfect, is an improvement on the previous “all or nothing” of a revocation. This has recently been strengthened further through the introduction of “expedited reviews” giving police the opportunity to keep problem premises closed while the review application is considered. One of the weaknesses of the system is that no matter how poorly a premises is run and how much crime and disorder it generates, if they are able to make improvements in the period between review notices being issued and the actual hearing they stand a good chance of being able to continue operating in the same style. Such improvements are often only short term and if standards again fall the whole process has to be started again.
When considering reviews and subsequent appeals an issue that causes concern is that when a responsible authority such as the police appeal a licensing authority decision, the applicant is automatically a co-respondent with the local authority, ensuring they are able to present their own case. However, when the applicant appeals a decision that has gone in favour of police, the police cannot be a co-respondent, leaving the licensing authority sole respondent and liable for all costs. A position that can seriously undermine the ability of police to successfully pursue their case.

Other areas of the legislation that cause considerable concern are the lack of a national data base for personal licence holders. This means that such a licence holder who has his licence taken away is able to go to a different licensing authority and obtain another licence. It also means that where an individual is convicted of a relevant offence there is no way of checking if he holds a personal licence.

Temporary Event Notices (TENs) continue to cause problems for the police service nationally. The notices circumvent most of the safeguards written into the Act, allow individuals with no training or experience to sell alcohol and provide very limited opportunity to object. This is particularly relevant when considering applicants who are not licence holders issuing notices for events not being held in licensed premises. Two recent examples where victims have been fatally stabbed at such “community” events highlight these concerns.

ACPO would like to see the whole provision of TENs tightened up to prevent abuse, by restricting the number an individual can apply for. We suggest extending the totally unworkable 48 hour provision for raising objections to five working days; making provision to allow objections on wider grounds than just Crime and disorder and including objections from other responsible authorities and interested parties.

Stress/Saturation areas. Key to the ACPO seven point strategy on licensing is the ability of local authorities to properly plan their town centres and join up planning and licensing decisions. The evidence is clear that a well planned town centre with mixed use and broad range of premises and customers goes a long way to reducing crime and disorder. Traditional flash points such as take away food outlets and taxis are better able to meet demand that is levelled out across the evening. The presence of a wide range of ages, including mature individuals, has a positive effect in helping to prevent alcohol fuelled ghetto’s populated by young people bent on getting drunk. In many ways some town and city centres are caught in a vicious circle as more alcohol led premises pull in a younger drinking crowd, this drives out mature customers and consequently businesses, allowing more alcohol driven premises to pull in yet more young drinkers. And the cycle continues.

CONCLUSION

The current economic climate together with wider challenges to the “On” trade brought about by such things as the smoking ban and ever cheaper “off” sales is having a profound effect on the licensing trade. With pubs closing daily, volumes reducing and customers going out later and spending less at “On” premises, efforts to maintain profits inevitably lead to standards falling. Premises attempt to reduce their outgoings while at the same time maximise income through tactics such as drinks and pricing promotions.

It is no co-incidence that evidence of an increase of promotions such as “all you can drink” for a fixed amount are again on the increase. These irresponsible practices drive up alcohol related crime and disorder. At a strategic level ACPO continues to work with partners in Government, in Health and Education and with the trade representatives in order to develop and implement strategies to deliver the long term cultural and behavioural changes necessary to drive down alcohol related crime and disorder.

October 2008

Memorandum submitted by the Police Federation of England & Wales

BACKGROUND

1. The Police Federation of England and Wales welcomes this inquiry by the Culture, Media and Sport Committee into the Licensing Act 2003. As the staff association that represents the interests of 140,000 police officers, from the ranks of Constable to Chief Inspector, we bring together views on the welfare and efficiency of the force, and take responsibility for their presentation to both Government and other opinion formers. For more information about the Police Federation please visit www.polfed.org.

2. Whilst we welcome the opportunity to submit evidence on a range of topics, we do not feel it is our place to comment on all of the subjects so we have limited our response to those areas we feel are of most relevance.
Has there been any change in levels of public nuisance, numbers of night-time offences or perceptions of public safety since the Act came into force?

3. The Federation does not hold statistics on the number of night-time offences recorded by forces in England and Wales (in fact we are unaware of any centrally held data of this nature). It is therefore difficult for us to provide empirical evidence of a correlation between the introduction of the Licensing Act of 2003 and an increase in public nuisance or drink-related offences caused during the night. However we are aware that the recently produced Home Office report on the early impact of the Act concludes that there are “no clear signs yet that the abolition of a standard closing time has significantly reduced problems of crime and disorder”.

4. We also receive feedback from our members who work on the frontline teams that police the night time economy. What is evident from that feedback is the detrimental effect that the Act is having on an already overstretched police service.

5. It is our understanding that one of the key motivations behind introducing the new legislation—via the abolition of set licensing hours—was to do away with the focal point for public disorder which had traditionally been closing time. But it is evident that this has not been achieved. The Home Office report states that “The scale of change in licensing hours has been both variable and modest: while the majority of pubs have extended their hours, most of these extensions have been short”. This certainly chimes in with comments that our members have made about the persistence of the closing-time flashpoint for potential trouble; however this might now be an hour later than was previously the case.

6. In addition, the greater flexibility which was introduced by the Act has resulted in a more staggered series of closing times which stretch later into the night/early morning. In the majority of inner city areas this means maintaining a response shift at a higher resilience level (maximum number of officers available to answer calls for service) for a longer period of time. As a result, some officers are now working later shifts. For example, in one force an “afternoon” shift now stretches from 6.00 pm until 4.00 am. Aside from the obvious detrimental effect to the individual officer, this also has a knock-on effect of stretching the resources available to other members of the public that need assistance to the absolute limits. All too frequently our members cannot attend to emergency calls because they are tied up with intervening in pub fights or drunken street brawls.

7. These problems have been further compounded by the dawn of the “super pub”—very large drinking establishments (with capacities in the region of 1,000 people) that are very difficult to secure and police effectively without a significant drain on police resources. It would appear that the Act has done little to reverse the trend which has seen an increase in such establishments.

8. It is clear then that the Act is yet to achieve its two main aims—to encourage more responsible attitudes to drinking and to reduce drink related crime and disorder in town centres. This is not surprising as the consumption of alcohol remains a fundamental part of most cultural aspects of British life and drinking to excess remains to be seen as laudable and to be encouraged by a significant proportion of the population (not to mention the major contribution that the taxation of alcohol makes to the Treasury’s coffers). It is our belief that more action needs to be taken to eradicate the cheap deals, “happy hours” and “two-for-one” promotions prevalent in many pubs, clubs, supermarkets and corner shops which encourage binge drinking and contribute to the persistence of alcohol abuse among the young and underage population.

9. For the foreseeable future it would appear that the primary responsibility for dealing with the consequences of excessive drinking will remain with the police service. What we would call for is an honest assessment by the Government of the impact of the increasing night-time economy—fuelled by alcohol consumption—on the resources and capabilities of the police service and to ensure that forces are given sufficient resources to enable their officers to ensure the safety of themselves and the public whilst complying with health and safety regulations and working-time legislation.

What has been the impact of the Act on the performance of live music?

10. We have no comment to make. This is a matter for local authorities and music industry.

What has been the financial impact of the Act on sporting and social clubs?

11. This is not an area for us to comment on as we only deal with those who break the law.

---

Chairman: We now turn to the view of the police. Can I welcome from ACPO Commander Simon O’Brien and Chief Inspector Adrian Studd, and from the Police Federation Vice-Chairman Simon Reed and George Gallimore, the Representative of Inspectors in the North West. Adrian Sanders will start.

Q56 Mr Sanders: Would you agree with the role of the police in making the licensing system work is really one of event management, in co-ordination with others, as much as enforcement?

Mr O’Brien: Broadly, that is probably about right. Clearly our role is enforcement when breaches come to light. There is also a very important part for us now to play in problem-solving our way through some of the issues that come out of town centre management. Yes, in partnership we can do both of those ends of the scale.

Q57 Mr Sanders: Is there significant benefit in police and local government licensing teams being co-located or local authorities consulting with police forces on their statements of licensing policy? Should this not be standard practice?

Mr Studd: In relation to the consultation, the local authority have to consult with the police, as the responsible authority, on their statement of policy, so that does go on. Of course, it is crucial that it does happen. In my experience, it does happen. In relation to the co-location, there are obviously a number of police forces across the country where some of the licensing officers are co-located. In fact, Westminster here is one such example. It does work well here, but in other places where they are not co-located it works equally well. I think it depends on the local structure and the local solutions. Either way can work.

Mr O’Brien: I think we will get to a point, as we did before the current legislation, where we are legislating our way through certain problems, but I also believe very clearly, not just from this piece of legislation but the Crime and Disorder Act in general, that working more closely with partners and getting upstream of some of these problems is where we should be going. Certainly my experience of working in partnership is that if we can look at what is the licensing position of a particular authority, where we can get a bit more teeth into that, into giving a bit of a view about what we think a town centre might look and feel like at night, that is a very useful place to be, and therefore we are not necessarily moving in there to enforce some of the activities that later happen. I certainly think, generally speaking, the way that you have brought a number of different pieces of legislation together under this particular Licensing Act has been positive. I think the number of powers that we now have under this Act is positive. I also think that it was a little about culture change in our country. The future may look a lot more at how we get that change in culture, and we may not be able to legislate our way through that: that is more about working in partnership and problem-solving our way through that.

Q58 Mr Sanders: Can I ask you what your view is of Temporary Event Notices, and the role you have to play in the fact that the public have no opportunity to have their say, either directly or through their elected representatives?

Mr Studd: Temporary Event Notices do cause us concern for a number of reasons. For a start, the 48-hour response time that the police have is completely inadequate. Once the notice is issued by the person who wants the event, the police have 48 hours then to respond. I think it has been touched on already that if that comes in on a Friday evening, the time has already gone by the time the licensing officer is back on the Monday morning. It is often addressed to the Chief Officer of Police, so by the time it has gone through Scotland Yard and gone out to wherever it is going, again two days has clearly gone. We would certainly be looking, for example, for five working days as an example. In relation to the grounds of objection, again that does cause us concern, that the police are the only ones who can object. Of course, it is not a matter of the local...
authority even being able to consider an application, because it is not an application: somebody merely issues the notice and, unless the police object, the event goes ahead. We very much think that it should be open to others to have a view, around the democratic process of residents and people like that, and be allowed to consider it in relation to a broader remit than just crime and disorder.

Q59 Helen Southworth: You might have heard earlier that in my town centre I have one of the highest densities of pubs and clubs in the country, so I take a very keen interest in the management of the night time economy. Could you perhaps describe what you think a local authority needs to be able to do in terms of its licensing policy for an area and in terms of things like cumulative impact areas, but, also, the broader issues around the management of individual premises, so that it can work effectively?

Mr O’Brien: It would be very useful if, in designing a place at the town centre, we look at how many, for example, vertical drinking premises there might be in a particular location, and then how and when they might start to turn out at a particular time. I think that could be done much more in a consultation and voluntary arrangement between different premises. There is a real issue, if we did talk about—and it was perhaps dismissed earlier—a café culture, in relation to what does that town centre look like at what time in the evening. Perhaps it is not just considering what the town centre looks like at three o’clock in the morning—frankly, an awful lot of places have never looked that good at three o’clock in the morning when there has been that amount of drinking going on—but what it feels like at six, seven, eight, nine o’clock in the evening. I think that a greater degree of planning, forethought, and the ability for local authorities, MPs and others to have more of a say and objections on some of that could be quite a useful way to go forward.

Mr Studd: The nature of licensed premises has changed as well. Previously we had pubs, traditional pubs, and we heard earlier about the changes that have been made within town centres. Lately we have seen the growth of far larger pubs, mainly with several floors, with thousands of patrons in them, and there is an issue about how we cope with those. We have also seen that a number of these complexes have grown up in towns, often on the edges of towns, where you will have nightclubs, bars, cinemas and restaurants all within the same complex, and, again, holding thousands of people. They themselves are a challenge in terms of policing and moving people around, and if disorder breaks out, in getting officers to them. We are seeing the nature of licensed premises themselves change considerably, not necessarily just in relation to the Act but just over the last 10 or 15 years.

Q60 Helen Southworth: In terms of the Licensing Act there is a very strong focus on individual premises: how it is managed, who the licensee is, what operates there. If you are looking at how people work in a town centre, they go from place to place. In policing terms, an awful lot of issues and events happen outside the individual licensed premises. Do you think the Act needs to take that more into account, to ensure that the public space between licensed premises is brought into consideration as well?

Mr Studd: It is quite difficult for local authorities to plan the town centre, because they have very few powers available for them to do it. The licence is seen as a property, and if somebody applies for a licence and they tick the right boxes, it is difficult for the local authority to say that they cannot have it. There are the cumulative impact areas and things like that which are relating to the policies, but clearly they are regularly challenged and sometimes successfully. What drives the market is what drives the premises that are going to be there. I know from my experience that people say to me, “We would like to give it over to such and such an operation, but the people who have the high volume vertical drinkers are willing to pay more for the rent and more for the lease”. Inevitably, if it is market driven, they are the ones who get it. I think this has been a bit of a problem in the larger town and city centres. We touched on earlier some of the premises which have come up, banks and places like that, and really the only people who are going to pay the premium rates are the people who can sell a lot of alcohol, and if you are selling a lot of alcohol you are getting a lot of young people through the door. They are the people who drink a lot.

Mr Gallimore: I should imagine that the street drinking ban has been very useful. In the transition between licensed premises, that does not mean that you take your glass or your bottle from the last one. Working with door staff on that has been a good move. It should always be part and parcel of any planning, of how your town centre works when you are town planning.

Q61 Helen Southworth: You have led me on to the next question: If you have a street drinking ban, what do you think about places which say that if you buy two glasses of wine you get the rest of the bottle free, but that means you have to drink it before you go out of the door?

Mr Gallimore: It is difficult to say, because they are a private enterprise and we know that they are in it to make money. At the end of the day, they are a business, but with that they have to be responsible. I do not know who would decide what is sensible promotion—I suppose that is for other people in the Licensing Authority. But if you get them to drink too much too quickly they are going to cause problems, not necessarily in your establishment but possibly the next one down the road when they move down there, so excessive quick drinking should not be encouraged.

Mr O’Brien: On that particular point, obviously you would look at how many people are going to share that particular sale. For example, with a bottle of wine there may be two or three people drinking it. The fundamental point—and I think it is something that we can more visibly enforce—is that if someone is walking around with an open vessel (a) they have
probably committed some offence under the Theft Act or (b) We have the power to stop that person and confiscate that. That tends to be much more of a black and white position in which the police can involve themselves. In terms of pricing structures in a freely available and lawful commodity, it becomes much more difficult for us to have some enforcement view there.

**Q62 Helen Southworth:** How much do you think needs to be about enforcement and how much about better management in the first place?

**Mr O’Brien:** Before the Act there would be problems where people drank far too much and there would be problems with certain people that did not manage their premises particularly well. I think the Act has given us some significant powers, which I think we have used very sensibly and we will continue to do so. I think, frankly, that enforcement is only one part of what we need to be doing. I think the whole view about our consumption of alcohol in this country probably needs a broader look at. That whole culture change might not come from enforcement, but could come, as we have seen with smoking and other areas, through health and education. I think that is an area we need to be focused on in the future.

**Q63 Helen Southworth:** Is this something, in your experience, in which there is currently sufficient involvement from health agencies in town centres, for example? Or do you think that is something that needs to be worked on? I have an example of a meeting with the owners of licensed premises in my constituency. We began it with a presentation from the consultants at A&E, who gave graphic demonstrations of injuries that had been caused to people in our own town on a Friday and Saturday night. The impact of that was very considerable. People who had not experienced it and who did not realise what was happening to people when they were outside the doors were given it very graphically. Do you think we need to do more of that sort of thing?

**Mr O’Brien:** Certainly there have been some very good examples and I think we are working much more closely with colleagues in health, both in acute trusts and the primary care sector. In Cardiff, for example, the greater ability and desire to share certain anonymous data has been very useful. I think both services can then plan their particular consultant that night. For example, knowing that emergency admissions have gone up in a particular location is not particularly stunning news, but at what time and over what premises allows us maybe to put further frontline ambulances further into the town centre. I think all those are bits of the problem solving that we are more used to dealing with these days. There is always going to be a problem in terms of our health colleagues and the issue of patient confidentiality, which we would respect, but in many ways just sharing our overall knowledge of a particular problem would allow us to respond in a much more professional and efficient way in the first place.

**Q64 Paul Farrelly:** I am the Member of Parliament for Newcastle-upon-Lyme which is a town in the Midlands, and like every town we have lots of pubs and we have the occasional problem of badly run pubs, particularly with respect to drug dealing. The latest antisocial behaviour problem concerns yobboes watching live Stoke City matches via a satellite signal that is supposed to go to Norway but comes into my town, and these pubs are co-run by a conservative councillor locally, which is quite an interesting problem and not just for the police. By far the major concern I have had about licensing in recent years was to do with the licensing of a lap dancing club in our town. There the police could not object because there were no crime and disorder problems. In fact, the police say that the people who go in there are generally far better behaved than the people drinking late at night in pubs. Of course people locally are looking for the police and licensing committees to make moral decisions. Has this issue caused you any problems? Would you like to see a separate licensing regime allowing some more local democratic involvement for what you might call adult entertainment?

**Mr Studd:** It is quite a difficult one. The Police Service has grappled with it over recent years, since it was introduced about 10 or 15 years ago. I think you are right when you say that often people look for a moral decision on it, which is something that it is very difficult for the police or local authorities to make. I guess there are only two distinctions. It is either entertainment, in which case it comes under the Licensing Act, or it is sexual encounter, in which case it has a separate licence. A number of local authorities have their own sex encounter licences, and that brings in a much more rigid campaign. They obviously get much more substantial fees, anything up to £30,000 a year, which allows them to visit the premises, and to monitor it and regulate it in that way. If it is just public entertainment—which is what they say it is—it is ordinary dancing and it falls within that same unit as a public house. It is very difficult to know what else can be done in relation to regulating it. It is true to say that there is no evidence that they cause any crime and disorder. Very rarely. They tend to be fairly well run and they tend to have a fairly high staff ratio to customers. The people who tend to go there tend to be a bit older, so they do not drink so excessively and cause the crime and disorder problems outside.

**Q65 Mr Farrelly:** Would it simplify things if anything to do with nudity were brought under the sexual encounter regime?

**Mr Studd:** What is nudity? Some lap dancing clubs take the G-string—well, they call it a G-string: you would be hard pushed to see it but they would say there is a G-string—and say that therefore they are not nude and therefore it is entertainment. There is the three foot rule, but where is the three foot? Is it from the dancer’s hair or their body or their feet? When are they touching and when are they not touching? With the best will in the world, when you get into the fine detail of it—as we have tried to do
on a couple of occasions—it is incredibly difficult and you get into all sorts of arguments when you are trying to review their licence or revoke their licence around those sorts of issues.

Q66 Mr Farrelly: Does anybody else have any thoughts?

Mr O’Brien: No. I think Adrian is the man on the spot in clubs and dancing. He deals with this all the time.

Q67 Mr Hall: Could we explore the correlation between the Licensing Act 2003 and the level of crime in the night economy? Since the passing of the Act has it got better, got worse, or is it about the same?

Mr O’Brien: Generally it has been pretty neutral. We have probably seen some rise in disorder, we have seen some rise in violence at certain hours of the evening, but there has not been any major spike in crime that we could directly associate with the differences in times that premises are staying open until. As the previous witnesses have given you evidence, there has been a generally neutral view on the recorded statistics. Clearly we are also very much aware that many issues of violence may not necessarily be reported either to us or to our colleagues in the local health authority. But we must work with what we had before, and the statistics that we had before and the statistics that we have had afterwards have not necessarily changed that much.

Q68 Mr Hall: Is it a fair comparison to say that now we have this Act it should have an effect on law and order in the night economy? Or is it something we have just in the general population?

Mr Reed: Could I come back to your previous question about the recording. Crime recording is a process and it is how that is interpreted. This Act coincided with the introduction of the police notices of disorder, so they were an alternative disposal to deal with some of these disorder issues. They may be masking some issues. There was an earlier question regarding the health authorities, and I think a good barometer is often the accident and emergency departments because there you see the true level of violence that has occurred—often violence that we never know about. It is often very difficult to compare different times, because there have been changes in legislation and there have probably been changes in the way we have policed as well.

Mr Studd: I think the most comprehensive review was the Home Office review which was conducted last year. That pretty much corresponds with the anecdotal evidence that I get when I speak to people across the country, which is that the levels of crime and disorder remain broadly the same but, across the whole piece, disorder and violent crime has decreased slightly in the early evening but increased later into the morning. Between 3.00 am and 6.00 am there has been an increase, and in relation to violent crime quite a marked increase (albeit it is only a fairly small percentage of the crime during the day). But, whilst you can trot out all the statistics and say that it has not gone up an awful lot, I guess the impact of that really has been that it has quite a drastic impact on police resourcing and the way that the police have to be managed, because, instead of being able to allow officers to go home at 12.00 or one o’clock in the morning before, when you then were able to bring them on eight hours later, they are on until three, four or five in the morning and it makes it more difficult then to bring them on in the morning. Inevitably that has an impact, with limited resources, on the visible presence of police officers during the day, so I think that is quite a significant impact overall.

Q69 Mr Hall: We have nothing from the Home Office survey. Those conclusions are, broadly, that it is too soon to tell.

Mr Studd: They did produce the report last year. It is difficult to tell for a number of reasons, not least because coinciding with the introduction of the Act in November 2005 was the first of the alcohol misuse enforcement campaigns. Since then, there have been a number of those and a number of underage sales campaigns, and probably in excess of £5 million poured into those in extra resourcing for the police, to ensure that the police are out there doing additional activity around licensing. Inevitably that is going to have skewed the figures. With all the other work that has gone on, it is quite difficult to compare like for like. The Home Office study was probably the most accurate.

Q70 Mr Hall: It is not a fair expectation to think that we can bring the Licensing Act 2003 on to the statute book and that should therefore have an effect on law and order in the night economy? That is not a fair assessment.

Mr Studd: No. As we have discussed, it is a much broader issue really than just enforcement. The police have been locking up drunks for a couple of hundred years and people are still getting drunk. It needs a lot more work than that. I think there are good things about the Act which do help and have helped the police, and there are also other areas which still need work.

Mr Reed: I want to put some more emphasis on this issue of policing. We are bringing officers on later, to work later into the early hours. Whereas, previously, most of the disorder was finished by about two o’clock, now it is four o’clock plus and onwards sometimes. The impact is that police officers are being moved from what they would have been doing the previous day and often the next day to cope.

Q71 Mr Hall: This impacts across the shift.

Mr Reed: Absolutely. In town centres and city centres, as weekends have other venues such as football matches getting on, the resources are really being stretched, because you cannot always call on other officers who perhaps have been doing other venues. At times, policing is really stretched—probably more so in the smaller towns than it is in
the bigger cities. My knowledge of some small market towns is that, on occasions, they are the Wild West, because they really are stripped of resources.

Q72 Alan Keen: My local authority is the Cheshire Police Authority. In the northern part of my constituency we have Holton Borough Council. It has produced a report on an alcohol strategy which is aimed at dispersing the drinking culture out of the town centres in the northern part of the constituency and back into their own communities through a pricing mechanism which would prohibit the sale of very strong alcohol and increase the price of alcohol available at retail outlets in the town centres and increase the drinking age to 21. A lot of that will require primary legislation if it is to be put in place. Do you have a take on this? You are closest to it, George. Which part of Manchester are you from?

Mr Gallimore: Stockport.

Q73 Mr Hall: I assume you are a Manchester City fan. I thought you might be from Ashton-under-Lyme.

Mr Gallimore: No, I used to work there. The worry of having what you said is that difficult trying to go through it and make it effective. The worry of having what you said is that every little centre could have a night time economy, and I do not think we could police that.

Q74 Mr Hall: What about raising the drinking age to 21? Is there a police view on that?

Mr Studd: We did a survey on that recently from the 43 police forces across England and Wales, and only one came back thinking it would be a good idea.

Q75 Mr Hall: Would that be Cheshire?

Mr Studd: I cannot remember off the top of my head. A couple thought it might be a good idea to raise the age for purchase of off-sale to 21. There were only two or three of those, but, generally, it was felt that the status quo was probably the best and that it would cause too much difficulty trying to go through any sort of change of process and it would not achieve an awful lot. Challenge 21, which no doubt you have heard about—

Q76 Mr Hall: It is a good scheme.

Mr Studd: Yes, it is a very good scheme. It is the one which ACPO promote very actively. I know that some places are doing their own Challenge 25, and I think that if you go to some places in America it is Challenge 30.

Q77 Mr Hall: Asda do a Challenge 25.

Mr Studd: Yes. From an ACPO point of view, we would encourage people merely to do the Challenge 21, because it keeps it simple across the country. Everyone can readily understand it and the signage is the same. An important part of it is the signage which all the premises agree to put up. That in itself was quite a challenge, because some of the larger supermarkets said, “We can’t put that up because it is not corporate. We need to have our corporate colours and we do not have orange” or “we do not have blue.” It was quite difficult getting them just to agree to put up a sign. That is one of the reasons we would encourage Challenge 21. Those sorts of schemes I think are probably as effective as trying to alter the drinking age.

Q78 Mr Hall: What about a ban on the sale of strong alcohol?

Mr O’Brien: To come back to your previous point, I think that, again, we are perhaps legislating our way into what is a problem of culture. In terms of location, spreading out the issues from a town centre, that perhaps comes back to the earlier point of how we can manage the shaping of that town centre in the first place and how we change the atmosphere in that particular location. In terms of raising the age or lowering the age, in many ways, if you can get people to drink responsibly I think that 18 is an age where people have reached an age to make some adult decisions. I certainly think that if you have a proportionate joined-up strategy of a location, then it can be that maybe you would advise and have some voluntary agreement about what strength of alcohol you would serve in particular bars and how you would price that. I am sure that even the big industries would not necessarily want to put Stella Artois at 5.2% on, they might just put Heineken on in certain premises. In many ways you could get some voluntary agreements about that. Certainly my experience is that if you can get people around a table, as we have discussed earlier, and have a sensible discussion about what we are all trying to achieve and if our aims are broadly consensual, then we can get some more work done that way rather than perhaps in trying legislate our way through some of these things.

Q79 Helen Southworth: I have had quite a lot of meetings with licensees in my constituency. One of the things they have said to me that they are sometimes influenced by to carry out practices that they would prefer not to because if they do not they will lose their jobs. Do you think that is a wider spread issue?

Mr Studd: Do you mean influenced by their employers?
Q80 Helen Southworth: Yes.

Mr Studd: Somebody has already said that a pub or club is a business, and I think it is true to say that the primary purpose of them is to make money for the shareholders. Our primary purpose, obviously, is around responsibility and preventing crime and disorder. There is sometimes that friction there. Yes, if times are hard, inevitably the pressure is going to be on them to sell more alcohol, to make money. They are generally judged on and get their performance pay not on how socially responsible they are but how much they have sold and what their turnover is.

Q81 Helen Southworth: Do you think there should be a focus on premises which have a high turnover of licensees?

Mr O’Brien: We have a lawfully available substance that the whole industry is dealing with. I think it is slightly dangerous to comment on what could be an anecdotal issue of people saying they are being pressurised. If that is your business, to sell a particular commodity, I am sure there is some inducement on you in that industry. If it becomes irresponsible, and you are pushing drink down the throats of young people or people who are obviously drunk, then their responsibility as responsible licence-holders is to say, “I won’t be serving that person any more.” When do we get a transgression of the law which should interest the police or other authorities, I think it really comes down to how you make sure that all your staff are trained to know when to make that distinction, and therefore the pressure does not come to bear because they can say that it is against the law and they will not do that.

Q82 Helen Southworth: Would you be in favour of a code of conduct on the drinks industry so that this is dealt with corporately by the drinks industry?

Mr O’Brien: If we can get the drinks industry to agree with certain codes of conduct, that would be very, very helpful. I think we have to be proportionate about what we are asking of them and when, at what location. We talked about polycarbonate earlier. I am sure that is a very useful way to go to try to reduce injuries, but is it right that we do that in every single premises at every time? I really do believe that if we can sit down with the key stakeholders and see exactly where they are coming from and what their motivation is. I can generally see that through negotiation we get some accommodating position. I think everyone would want to see responsible drinking, lawful drinking, in town centres where people feel comfortable and safe. That is our aim. I am sure it will be the aim of many of the people promoting the selling of alcohol.

Q83 Helen Southworth: In terms of the review process, are there any issues about how long it might take to get through the process?

Mr Studd: It can take quite a long time. It can be quite a frustrating process, certainly, particularly because the premises remain open throughout the process. They obviously are aware at that stage that they are being put under close scrutiny, so for that six, eight, ten weeks, they are going to improve their standards as much as they can, even if it has an impact on their business short-term. More often, the review process goes in favour of the police or whoever has called for the review, but it then comes to the appeal and at that stage there is a complete rehearing in front of either the panel or, if it is at the court, the magistrates, and they say, “Well, we can only judge it on how it is operating now, and, as of now, it is operating fine” and so they are allowed to continue. Then, of course, the potential is there for it to slide back to operating as it was previously, and the whole process would have to start again.

Q84 Helen Southworth: The point of the review was that it was supposed to be able to give a quick response and did not involve taking the entire license away. What sort of length of time?

Mr Studd: It is difficult to give any specific length of time, but certainly six to eight weeks would be common. It is meant to be quick and simple but when you have big businesses with lots of money invested in there, they are going to be protecting their interests. If it is in their interests to delay it, they are going to ensure that they pay top quality barristers to delay it.

Q85 Helen Southworth: Is that six to eight weeks from the beginning to the end of appeal?

Mr Studd: No. That is just to the initial review.

Q86 Helen Southworth: And what length of time would it be to an appeal?

Mr Studd: Then another six to eight weeks to have the appeal hearing.

Q87 Helen Southworth: If Christmas was coming up, which is the main sales period for lots of pubs and clubs—

Mr Studd: They could easily string it out to beyond Christmas.

Q88 Philip Davies: Could I put an entirely different premise to you from the one that has been put to you so far: that the vast majority of people in this country drink responsibly and the vast majority of young people in this country drink responsibly, and that, rather than penalising the entire country by preventing them doing this, that and the other and going about their perfectly legitimate daily, lawful business, and rather than preventing people from buying things at a reasonable price and forcing them to pay far more for it than they otherwise would, we would be better off effectively punishing the ones who create disorder in the streets.

Mr O’Brien: I think the legislation is framed in that way. Clearly we are looking to take to task those people who transgress the law. I completely agree with you: the vast majority of people in this country will drink responsibly and the vast majority of retailers will sell drink responsibly, but you will get those places—and that is where we are talking about town centres at certain times of the night—where people are not behaving responsibly and possibly people have not sold drinks responsibly. We are not
frightened to take on that enforcement activity. Albeit that it brings us some resourcing issues, we will continue to do that.

**Q89 Philip Davies:** Would you not accept that, even when alcohol is being sold cheaply and at any particular time of the night, still the vast majority of people at any one moment in any city centre or any town centre are acting responsibly, and the vast majority of people are behaving responsibly and that, therefore, the police, rather than forcing everybody to pay more for their alcohol than they otherwise would or trying to force everybody into some kind of restriction, should be focusing their attention on those people creating fisticuffs late at night and not worry about all the other people?

**Mr O’Brien:** I think I have made it very clear that we can legislate our way through some of these things or we can look for a culture change in the way that we have drinking in town centres. Clearly we are going to be brought in to deal with the particular small minority of individuals that are causing mayhem, and that is what we deal with in certain town centres at certain times in certain parts of the country.

**Q90 Philip Davies:** Would you like, therefore, to see magistrates’ courts, perhaps, or courts generally, treating disorder issues more seriously when people are put in front of them? Would you like to see tougher sentences for people who are causing problems rather than tougher sentences for people who are not causing problems?

**Mr O’Brien:** Alcohol as a mitigating factor can be a problem. Alcohol when it is associated with violence should be an aggravating factor, and therefore it is for our colleagues in the magistracy and others to take that into account.

**Mr Stud:** If you go to any town or city centre at two or three o’clock following a Friday or Saturday night, the vast majority of those people have not drunk responsibly; the vast majority of them have drunk to excess, and their behaviour is loud, noisy, antisocial behaviour for the people who are living around there. I guess it is what you call irresponsible drinking. Certainly if you look at the Department of Health figures and take the Government’s view and guidelines, then an awful lot of people do drink irresponsibly, because an awful lot of us do drink more than four units for a man and two or three units for a woman. It depends on what your guideline for responsible is. In town and city centres, if you go out there, an awful lot of people are drinking irresponsibly.

**Q91 Philip Davies:** In our previous session, Simon Quinn, from the Association of Town Centre Management, said that in his view the more flexible regime of opening and closing hours has led to a spread in the times that people are leaving and that there has been a reduction in antisocial behaviour as a result of that. Is that something that you would recognise or something that you would take issue with?

**Mr Reed:** For the officers who police that time of day, they would probably have an issue, in that all it has done is to push this closing time further back. We have two closing times. A number of premises will shut at the old traditional time of 11.00 and 11.30 and put a number of people on to the streets then, and probably from two o’clock onwards those same people are leaving other premises. We now have two dispersal times and one that can go now on until four or five o’clock in the morning. It may not all result in disorder but it certainly means that it still needs policing. That comes back to us providing the resources to do that.

**Q92 Philip Davies:** Rather than trying to restrict opening hours or whatever it might be, is the solution not to recognise the fact that we need more police officers? Rather than trying to fiddle about with opening hours, is it not the fact that there needs to be more police officers?

**Mr O’Brien:** The need for more police officers is something that I would not deny and I would not want to come away from here giving that impression. That would be very nice, thank you. But there are other people who can police those particular town centres and there are other ways we can manage the particular dispersals in those, both in terms of taxi marshals and colleagues on the doors of these premises. Yes, we have to look at the risks that are presented, and whether we have a rise in violence or disorder, we still have a good number of people in a town centre late at night. We would have had that prior to this legislation. We might see more people on the streets now that this legislation is in, but in many ways some of that is for the police to deal with. But I think we can do that in a far more pragmatic way if we do it in partnership with other people, with the licensees, the local authorities and the police offices in those localities as well.

**Mr Stud:** We are never going to address this by addressing what is really the symptom: the disorder. If we look back to the early eighties, to the issue around football and the state we were in with football, where at most of our first division games, as it was then, there would be hundreds, sometimes thousands of police officers on duty, and we still had the reputation of the most violent fans across the world. That has now changed to the point where we now have very few police officers inside a ground and relatively few outside, and very little disorder. That has been because of working with them—because of the legislation but working in partnership with them, in not just trying to address the disorder which happens but trying to prevent it earlier in the day, and in driving that culture change around the football hooligans and the people who are intent on disorder, using the disguise of there being lots of people there to do that. It is the same with the license issue really; you only need a relatively small number of people causing disorder, being antisocial, but they are anonymous—or they think they are—withins the broader context of a town or city centre when there are a lot of people there.
Mr Gallimore: Could I come back to you on the fixed penalty notice? I have dealt over the last three years quite closely with the criminal justice system side. The magistrates complain that they are not seeing enough cases, because a lot of people do not get arrested for drunk and disorder any more but are dealt with for public order and get a fixed penalty notice in the morning when they have sobered up. The magistrates are therefore not getting the chance to punish certain behaviour. They are getting less business to do and they are quite concerned that they are being edged out of the system a little bit on that.

Q93 Alan Keen: I am laughing, because what you of the system a little bit on that. they are quite concerned that they are being edged out morning when they have sobered up. The magistrates complain that they are not seeing enough cases, because a lot of people do not get arrested for drunk and disorder any more but are dealt with for public order and get a fixed penalty notice in the morning when they have sobered up. The magistrates are therefore not getting the chance to punish certain behaviour. They are getting less business to do and they are quite concerned that they are being edged out of the system a little bit on that.

Mr O’Brien: Chris certainly had a view at the time when he made those comments. I think you have to be proportionate again and not look at an anecdote. I do not think we can see major statistics that would say that a particular venue playing live music necessarily brings more crime and disorder than another venue that has that amount of footfall going through it. In my view—and I am certainly speaking as the ACPO head here now—we should look at each case as it is. Certainly we now have this as part of this piece of legislation so that we can licence these particular events and I think that is probably a positive step forward.

Ms Reed: Could I come back to you on the fixed penalty notice? I have dealt over the last three years quite closely with the criminal justice system side. The magistrates complain that they are not seeing enough cases, because a lot of people do not get arrested for drunk and disorder any more but are dealt with for public order and get a fixed penalty notice in the morning when they have sobered up. The magistrates are therefore not getting the chance to punish certain behaviour. They are getting less business to do and they are quite concerned that they are being edged out of the system a little bit on that.

Q94 Alan Keen: I am laughing, because what you have just said reminded me that when I was playing for an army team, years back, at Imber Court against the Met Police, I got my arm broken during the game! I want to ask you about live music, but before I do that I wonder if you would expand on one of the answers you gave to Philip Davies. We have all heard in television plays a solicitor saying, “My client would not do this normally but he was affected by drink.” I think that is what you were referring to when you mentioned drink being an aggravating factor. Could you expand on what you said before?

Mr O’Brien: It is one of those issues that, if put before the judiciary, may be seen as something suggesting your behaviour perhaps should be forgiven for that. I would have a clear view that certainly in terms of violence, be that domestic violence or violence in a town centre at night, it should definitely be an aggravating factor, and it should be for our colleagues to deal with appropriately at the time.

Mr Reed: We are starting to see a practice now where police officers are wearing cameras on their helmets. There are some pilots that have gone on and the scheme is going to be expanded upon, but I think that has been useful to use in evidence to show the individual and the courts at a later date that he may be wearing a suit and tie now but this was that individual’s behaviour on the night in question. It is a sobering thought for everyone that people do behave in quite dreadful ways and blame alcohol for it.

Q95 Alan Keen: Musicians would like a bit more freedom for people to put on live music for up to 150/200 people maximum, so not the massive events. What are your feelings about that?

Mr Studd: There are two ends of the spectrum, as we have discussed. At the top end, the larger premises and the larger events and promotions, we find, are what cause a lot of the problems. It is not venue specific; it is specific promotions for groups or whatever you want to call them. They have their own followings, sometimes involving gangs, and it is when they are playing at an event and the followers come together, that you get the problems. At the lower end of the scale, even 200 people is quite a lot of people. If you think of traditional live music—as in a pub band or that type of thing—I do not think anyone would say they are going to cause a big crime and disorder problem, but if it is in a small village pub with houses close by then I guess there are issues there around public nuisance and noise nuisance to the residents. Some sort of regulation would give them some sort of voice. We do have concerns around the potential for these provisions to be abused. For example, as you know in London at the moment we have the knife crime initiative, Operation Blunt. Two recent fatal stabblings were both at community type events, where they were operating under the auspices of a temporary rent notice. They were relatively small events and because of the temporary event notice procedure they were relatively unregulated. If we were to allow music to go down that same road and be completely unregulated for 200 people, potentially there are those issues there. Whilst on the surface your pub band or whatever is not a problem, it does leave it open to abuse and if there are no safeguards there that causes concern.

Mr O’Brien: I think it has to be on a case-by-case basis, so that we do not anecdotally say that music events might cause disorder, that certain music events create a certain schism in a particular part, that particular music might attract a sort of crowd. I think we need to deal with issues around music but have a voice in allowing and licensing those particular events.

Chairman: Since we are going to try to squeeze one more quick session in, we should draw to a close. Could I thank you all very much.
NATIONAL DATABASE FOR PERSONAL LICENCE HOLDERS

Thank you for this opportunity to submit the view of ACPO on the creation of a National Database for personal licence holders. The lack of such a database has caused concern to police forces nationally since the introduction of the Licensing Act 2003 and its full implementation in 2005. It was noted, in the original draft legislation, that such a database would be considered following the assent of the bill. The issues centre on the fact that personal licences are issued by local authorities independently without reference to other authorities, applicants can go to any authority for a license. Therefore if an individual has a licence revoked in one area there is nothing to stop them going to another authority to apply for another. Additionally, if an individual were convicted of a relevant offence there is no way that the court would be aware of the fact that they hold a licence unless they declare it. In such circumstances the first time this might come to light is when the licence is due for it’s 10 year renewal. A related issue concerns the notification of Temporary Event Notices (TENs), the number of TENs an individual can issue is limited under the legislation, however, at present there is nothing to prevent an individual using their maximum allocation in one local authority area then moving on to another.

It is our view that responsibility for delivering the database lies with the DCMS. There are, however, a number of options available as to who might manage it on a day-to-day basis. For example, LACORS—as the local authority co-ordinator, are already in the position of maintaining regular contact with local authorities nationally and may be able to use their established links to create and/or maintain the database. Other options worth consideration might be for an individual local authority taking on the responsibility in exchange for extra funding, or an established agency such as the SIA or DVLA who are already involved in similar work. Looking to the commercial sector there is at least one company who currently supply a licensing IT package to a significant number of forces nationally, it might be worth considering an option where a commercial enterprise might be interested in developing such a database.

In relation to the obstacles to such a database the initial challenge would be the back record conversion and then how to ensure data is kept current. As far as I am aware there is no standard IT used by local authorities, so data feeds could be problematic, having said that all authorities are currently required to maintain records so there should be a technical solution. Having established a database the issue would be maintaining the two-way flow of information, not all relevant offences are recordable so there would need to be a way of getting the details from court onto the database. There would also need to be a procedure for checking individuals, who come to notice for a relevant offence, to establish if they hold a personal licence. This would need to be done at, or prior to, court appearance as the legislation requires that the court consider revocation of the licence at the time of conviction.

Whilst there are clearly challenges in establishing this database I again refer to the drafting of the original legislation and this issue of a national database needs to be considered and either implemented or closed down.

November 2008

Memorandum submitted by the Magistrates' Association

BACKGROUND

The Magistrates’ Association has a membership of some 28,000 representing the vast majority of sitting magistrates throughout England and Wales.

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.

However, the Magistrates’ Courts remain as the appeal court for all those who disagree with decisions made by local council licensing committees.

Magistrates’ Courts have powers to grant closure notices for licensed premises at the request of a senior police officer.

Magistrates’ Courts also have responsibilities for dealing with holders of Personal Licences who commit any one of a range of offences.

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.


OUR SPECIFIC CONCERNS

Although the Act itself has provided little work for the courts, there are some issues that the Association would like to bring to the attention of the Committee. (There were some 569 appeals between April 2006 and March 2007 Source: http://www.dcms.gov.uk/reference_library/research_and_statistics/4865.aspx)

Costs of Appeals

The new drive within government towards full cost recovery has increased the cost of appeals under the Act. At present, individuals appealing a decision of a licensing authority pay a protected lower fee rate. The Association believes that this is an important right that should be enshrined in law.

Joining of residents to appeals by licence holders

At present, there is no statute power to allow local residents who have campaigned against either the granting of a new licence, the extension of an existing licence or indeed for a review of a licence to be heard on appeal if the licensing authority refuses or alters all or part of the licence request at first instance. On appeal, the licensing authority is not required to present the views of residents, although it may do so if it wishes. The Association is aware that various courts have taken different views about whether or not to allow residents to present their views at appeal hearings where an applicant has appealed. The statute, at Schedule 5, does not deal with this issue.

The Association believes that, in the interests of fairness, it should be made clear by parliament whether anyone raising an objection at first instance may be heard on appeal in addition to the licensing authority where the authority has turned down the licence request, whether on these grounds or on other grounds. This would bring licensing appeals more in line with planning appeals. However, as the former are judicial in nature and the latter administrative, there might be a need for legislation.

National Register of Personal Licence Holders

Premises selling alcohol must normally be under the direction of a designated premises supervisor, who must be an accredited Personal Licence Holder. These licences are valid for 10 years and are issued by the authority where the person is living at the time they wish to apply for a licence. Although each authority holds its own register, there is no central register. The absence of such a central database makes it impossible for the police to check whether anyone arrested for an offence listed in Schedule 4 of the Act is in fact a personal licence holder without checking with every local licensing authority. As one of the four licensing objectives is “the prevention of children from harm”, the creation of a national register would further this particular licensing objective.

Only 11 personal licences were revoked between April 2006 and March 2007. A further 13 were suspended; 13 forfeited and 192 surrendered, according to DCMS figures. This is just 229 out of 59,000 licences granted—0.38%. Only 435 requests for licences were refused—61% of these by just five local authorities (Hackney, 20; Leicester, 20; Pembroke, 28; Torfaen, 73; Slough, 128). There were just 286 police objections to personal licence requests. Source: http://www.dcms.gov.uk/reference_library/research_and_statistics/4865.aspx

It is a curious outcome of the regulatory process that door supervisors, often under the control of personal licences holders, are nationally registered by the Securities Industry Authority and have to re-register on a more frequent basis than do personal licence holders under the 2003 Licensing Act. It might be worth considering whether the licensing of premises should remain with local authorities but personal licences should either be transferred to the SIA or a new national regulatory body.

OTHER ISSUES

Temporary Event Notices

Although the courts are not usually involved in the process of granting such notices, the Association is aware that a number of possible loopholes exist that make it difficult to prevent the granting of such notices. Specifically, only the area of the “sale” of alcohol needs to be specified allowing premises to be used more frequently than envisaged in the Act. The time limit for police objections is very limited if a TEN is lodged with the police late on a Friday afternoon. Although reputable applicants will usually provide more time, the time limits in the act can provide the possibility for abuse and might be re-considered to see whether they provide sufficient time in all cases to ensure the police can meet the prevention of crime and disorder objective.

During the period April 2006 to March 2007, some 101,083 TENs were granted. There were 175 cases where the police objected, and 164 requests were refused. 254 TENs were not granted because limits had been exceeded.
Use of Fixed Penalty and PND notices

The Association remains concerned that some violence involving alcohol is dealt with by means of a fixed penalty notice or penalty notice for disorder. The Association believes that all crimes involving violence, even when no lasting injury results, should be dealt with before a court. One reason is that ancillary orders, such as a ban on entering licensed premises, can be ordered by a court, but not as part of a fixed penalty. Such penalties may also have a lower collection rate than for court fines.

Drink driving

The consumption of alcohol before driving a motor vehicle remains a key concern for the Association. In many people’s minds this is still regarded as a problem of the festive season. However, it is undoubtedly a problem throughout the year. Many drivers are still unaware of the relatively small amount of alcohol they need to consume to become over the limit. We welcome the proposed moves to increase awareness and responsible drinking. Many of those who appear in front of magistrates for this offence have never been before a court for any other matter.

Under-age drinking

Young people are particularly vulnerable to both the short term and the long term effects of alcoholic intoxication. Considerable attention has been paid to this issue and some of the actions, such as the “two strikes and you are out” principle, have been noted above. No doubt the DCMS has a role to play in working with other government departments on this issue.

The more general issue of violence and disorder and the part played by alcohol

The Magistrates’ Association is aware of the British Crime Survey findings that violent crime has been reducing since the peak reached in the late 1990s. DCMS has also recently published research into the effects of the 2003 Act. We note the following parliamentary answer given in the House of Commons in June this year by Home Office minister Vernon Coaker that sums up the evidence:

Alcoholic Drinks: Crime Prevention


The main conclusion to be drawn from the evaluation is that licensing regimes may be one factor in effecting change to the country’s drinking culture—and its impact on crime—but they do not appear to be the critical factor. The overall volume of incidents of crime and disorder remains unchanged, though there were signs that crimes involving serious violence may have reduced. There was, however, evidence of temporal displacement, in that the small proportion of violent crime occurring in the small hours of the morning had increased.

In surveys, local residents were less likely to say that drunk and rowdy behaviour was a problem after the change than before it, and the majority thought that alcohol-related crime was stable or declining. Police, local authorities and licensees generally welcomed the Act and the new powers it gave them once implementation teething problems were solved. In general they did not think that alcohol related crime had got worse.

In July 2007 the Home Office published findings from an analysis of data collected from a self-selecting sample of police forces (Violent crime, disorder and criminal damage since the introduction of the Licensing Act (2007) Babb et al).

The key finding from this study was when comparing the 12-months before and after the implementation of the Licensing Act 2003, there was a 1% fall in recorded incidents involving violence, criminal damage and harassment; and a 5% fall in serious violence. The findings also showed the timing of offence had changed; with a 1% increase in offences occurring between 6.00 pm and 6.00 am, and a steep rise in the small minority of offences occurring in the small hours between 3.00 am and 6.00 am—an increase which was large in proportional terms (25%) but relatively small with regards to the number of incidents (236).
The evaluation of a multi-agency approach to tackle violence and disorder in the night-time economy was assessed in the Reducing alcohol-related violence and disorder: an evaluation of the TASC (2003) Macquire et al report. This report presented findings from a police-led multi-agency scheme launched in July 2000 under the Home Office with the aim of reducing alcohol-related crime and disorder in central Cardiff.

The findings from this study showed that there were significant reductions in violent and disorderly incidents occurring in or just outside individual pubs and clubs which were the subject of carefully targeted policing operations. The most successful of these, lasting eight weeks, was followed by reductions of 41% and 36% in such incidents in and around the two clubs targeted. The reductions were also sustained over time.

The Home Office also monitors the levels of alcohol-related violent crime and the perceptions of alcohol crime on an annual basis via the large-scale British Crime Survey (BCS). The results show that in 2006–07 46% of victims of violent crime perceived the offender to be under the influence of alcohol; a similar proportion to the previous year (45%). Additionally, the proportion of adults who perceived drunk and rowdy behaviour in public places to be a fairly/very big problem in the year ending December 2007 was the same compared to the year ending 2006.

The Secretary of State for DCMS said in a written statement to the House of Commons on 4 March 2008 about the Evaluation of the impact of the Licensing Act 2003: and tackling alcohol-related harm:

Whilst crimes involving violence may have reduced over the evening and night time period, the evidence also points to increases in offences, including violent crimes, reported between 3.00 am and 6.00 am. This represents 4% of night-time offences.

Similarly, whilst there is no clear picture of whether alcohol related demands on A&E services and alcohol-related admissions have risen, some hospitals have seen a fall in demand, others have reported an increase.

It is also clear that the overall reduction in alcohol-related disorder we wanted to see across the country has not materialised consistently in all areas.

Although the Association is aware of DCMS desire for further new powers to deter wider anti-social behaviour associated with alcohol consumption, more may be needed by way of liaison between the DCMS and the Ministry of Justice to ensure a commonality of approach. For instance, the new Magistrates’ Courts Sentencing Guidelines that came into force in August 2008 do not make explicit reference to the expectation and the Ministry of Justice to ensure a commonality of approach. For instance, the new Magistrates’ Courts Sentencing Guidelines that came into force in August 2008 do not make explicit reference to the expectation of a licence withdrawal after two sales to those under 18 within a specified period. Although we have no figures, we have not been notified by members of any increase in closure notices.

The Association notes that reference is generally made to offences and not to detection. It would be possible for the courts to see more offenders even if the level of offending fell, were the rate of detection to rise.

It is likely that the courts see only a proportion of alcohol related violence. As the following comment from the Government Office for the South East makes clear, not all violence may be reported to the police:

Information collected by emergency departments is useful because many alcohol related assaults are not reported to the police but the injuries sustained in those assaults are often treated by hospitals. The information collected by emergency departments combined with police information provides a clearer picture of alcohol related crime and disorder in an area. There is evidence to show that the sharing of information between agencies can reduce assaults, thereby also reducing alcohol related injury admissions to emergency departments. 22 hospitals in the South East are currently involved in implementing this violence prevention model.

http://www.go-se.gov.uk/gose/publicHealth/improvement/558761/

The evidence on the levels of alcohol related crime and disorder since the introduction of the 2003 Licensing Act seems somewhat mixed. In some areas there have been improvements whilst in others there remain concerns as two recent illustrations from the West Country have demonstrated.

Judge Cottle at Exeter Crown Court said that licensing laws had been “relaxed to the point where there effectively weren’t any”.

The Chief Constable of Devon and Cornwall police told the Home Affairs Select Committee earlier this year that in 2004–05, 33% of violent offences in Devon and Cornwall were drink-related but this rose to 46.8% in 2007–08, or 3,261 crimes.

Recording alcohol and offending

There is an issue with reporting the relationship between alcohol and offending. Where the offence relates to the consumption of alcohol, such as drink driving, there is no problem. However, in domestic violence, how far is alcohol to be seen as an aggravating factor and does this mean that the offence should be classified as alcohol related?
Effective use of police resources following the introduction of the 2003 Licensing Act

Some of the evidence already cited refers to the fact that after 2005 more offences involving violence were taking place later in the evening and into the early hours of the morning. Although this is not an issue for DCMS, the long distance between charging centres in some rural areas can mean limited police cover to deal with these offences if police officers are conveying suspects from earlier incidents to a central charging centre. The risk must also be that the extension of opening hours has also spread police resources more thinly. The work undertaken in cities such as Cardiff may offer a solution in urban areas, but more thought may be needed in relation to towns with less than 100,000 populations; especially where there are concentrations of young people in the high risk 18–25 age group.

Conclusion

The 2003 Licensing Act confirmed many of the changes that were already being introduced by other means, such as later opening hours associated with public entertainment licences and the growth of clusters of premises in city centres that followed the decision in the late 1990s that justices could not consider the issue of “need” when granting a new licence. These changes, together with the revolution in retailing, probably drove many of the changes that produced the current licensing scene.

For most, the social revolution in relation to alcohol consumption of the past 20 years has been a success; for a small minority, whether bent on violence or seduced into it by excess alcohol consumption, the effects of the 2003 Act have probably been minimal.

The courts are now only marginally involved in the licensing process, but remain fully involved in dealing with the consequences of the consumption of alcohol on society more generally.

The DCMS Select Committee is no doubt particularly interested in the regulatory aspects of the 2003 Licensing Act. Apart from the specific issues raised at the start of this note the Magistrates’ Association recognises that, from the point of view of our members, the switch from our courts to local authorities as the regulatory body has been successful.

To the extent that this switch has not resulted in a nationwide reduction in alcohol related offending, the Act has so far been less successful.

September 2008


Chairman: Could I first of all apologise for keeping you waiting quite so long. I hope you have found it interesting. For our final session, we turn to The Magistrates’ Association and I welcome Professor John Howson and Mrs Barnett. Philip Davies will begin.

Q96 Philip Davies: Do your members report any trends in the types or numbers of cases involving alcohol related disorder coming before you since the Act came into force?

Professor Howson: The first thing to realise is that the Act was not a big bang; it was a process or deregulation which came at the end of a series of consequences, probably the first of which and most important of which was the movement of pub entertainment licences from the Magistrates’ Court to the local authorities in the late 1980s and the subsequent request by a large number of licence holders who obtained entertainment licences for supper licences to go with them (which would allow them to stay open until 12 o’clock or one o’clock at weekends), so that by the time we came to 2005 a very large number of on-licence premises were already open for most of the hours they still are—although, as we have heard in the previous sessions, there are a number of those that have now extended that towards two o’clock, three o’clock or even four o’clock. The other big change was that of the case of the Preston Justices in the late 1990s, when the issue of need for a new licence was raised and courts were effectively told that the need principle no longer applied and selling alcohol was no different from selling shoes; that the markets would compete with each other and it would self-regulate in terms of the number of premises as a commercial decision. Both of those were well in place by the time we got to 2005.

Both of those, I think, had produced some of the rise in violence related to alcohol which we saw ahead of the 2005 Act, and may explain why numbers have not gone up significantly, according to reports, since the Act came in but have been spread out, in some cases, with all the resource implications the police talked about, until the early hours of the morning.

Q97 Philip Davies: What about the point the police just made: that in crimes involving alcohol, the alcohol is treated as a mitigating circumstance when sentencing, but it should be treated as an aggravating feature.

Mrs Barnett: It is factually incorrect according to our guidelines. Those are the definitive guidelines to which we have to have regard. They do not tell us what to do, but we have to consider them. Committing an offence while under the influence of either drink or drugs is an aggravating factor. That
Professor Howson: I think probably the issue is the other one that the police talked about: whether it is treated as a mitigating factor earlier on in the process, before it even gets to us—as to whether or not people are bundled in the back of the ambulance and taken to A&E and not charged or allowed to sleep it off or given a fixed penalty or a penalty notice for disorder rather than being brought to court. We would certainly say that if there is anything that is alcohol related, and violence is involved, that should not be given a fixed penalty or a penalty notice for disorder but should come in front of the court in every occasion. The fact is that 10% of assaults to PCs in some areas are now dealt with by conditional cautions. If there is alcohol involved in that, it should come in front of a court—not least because we have the ancillary orders in terms of being able to ban people from licensed premises.

Q98 Philip Davies: In your evidence you have suggested changing the offence of persistently selling alcohol to a person under 18 from “three strikes and you are out” to “two strikes and you are out”. Have either of you ever worked on a check-out?

Professor Howson: We have not suggested that. We believe that is Government policy. We are slightly confused as to whether it is a reinterpretation of the current “three strikes and you are out” in that it is the third strike and you are out, or whether they are intending to bring forward primary legislation to bring alcohol into line with tobacco. You cannot lose your licence for selling tobacco, because there is not one, but presumably you would lose your licence on two from the point of view of selling alcohol. We are slightly confused about that, but we understood that is what the Government are thinking about and not us.

Q99 Philip Davies: In my experience, most retailers do try to stop people buying alcohol under the age of 18—often in very difficult circumstances, I might add, and under lots of pressure. Do you not think it would be more effective if the focus was on stiffening up the punishments for people trying to buy alcohol under 18 rather than for those people selling it? Often it is the ones who are buying it who are the only ones who know they are committing a crime. Sometimes the people who are selling it do not realise they are selling it to somebody who is under age.

Professor Howson: I am slightly confused by that. Do you mean that the retailer finds somebody who they think is under 18 and says, “I am not selling it to you. Hang on there while I ring the police because you have been trying to buy alcohol”? How would you police that in practice? We know how you can police the present situation, which is through test purchasing: you send somebody in and the retailer is clearly selling to somebody without asking them for proof of identity, proof of age or anything. But how would your system work in practice?

Q100 Philip Davies: In terms of punishing the people who try to buy alcohol.

Professor Howson: Identifying and catching them?

Q101 Philip Davies: The supermarkets would refer to the police.

Mrs Barnett: We do not think that it is for us to make that sort of comment. What we do is to apply the law as it stands. There is a very clear law, as it stands, with particular provisions in it, and that is what we apply. We do not go around saying, “It ought to be different” because that is not for us to do.

Q102 Philip Davies: Magistrates must sit in courts and get horribly frustrated at the things that go on that they cannot deal with effectively, and therefore must have an opinion about things that should be changed.

Mrs Barnett: But we are still members of the judiciary and we still apply the law as it stands. We may certainly have a view as to whether or not something could be improved but we have taken an oath to deliver the law as it is, and therefore it is not easy for us to say that something ought to be different in the way that you are suggesting.

Professor Howson: The general point is that probably the 2003 Act had more impact on the off-licence trade than it did on the on-licence trade. The on-licence trade was relatively well regulated at that point. Local authorities had put a lot more resources into the partnership types of activities for the on-licence trade. Probably more thought about the off-licence trade might well be necessary, particularly because it is a competitive environment. People are selling a product and in an environment which allows them to sell it at whatever price they can get for it.

Q103 Helen Southworth: You heard earlier the police officers describing the length of time it could take for a review. Do you have any comments about the administration of the process in terms of ensuring that there is as short a time as is proper between a case being brought?

Professor Howson: It is very difficult for us to say. Most of the process is out of our hands. We are the judiciary, not the Court Service. It starts with local authorities. Clearly, it will depend upon court time; it will depend on how it is processed. We have been concerned, in terms of appeals, in making sure that individuals were not priced out of a court service where full cost recovery for fees was the order of the day. You will see in the evidence that for an individual to bring an appeal is £75 and for anybody else to bring an appeal it is £400. We felt that it was important that individuals were not priced out of that system.
Q104 Helen Southworth: Do you have any comments about what should be appropriate for the timing?

Mrs Barnett: I would agree entirely with John that it is not easy for us to say, but there was a suggestion in what we heard the police say earlier—and I think it was something to do with big businesses in particular—that the process would be strung out and that it would be delayed. We are all trained within an inch of our lives and certainly our inclination is to resist adjournments. We do not go with playing the system. We do not wish anything to be delayed. We want to get on with things as fast as possible. Provided the information is before us, we will try to proceed as fast as we possibly can.

Q105 Helen Southworth: So you are alert to these issues.

Mrs Barnett: Most emphatically. And it is not only in cases like this, obviously. It happens in other cases as well.

Q106 Helen Southworth: Could I ask you about what I think are called alcohol referral orders, reference you can make if you understand that somebody who is before you has a problem with alcohol.

Mrs Barnett: As part of a community sentence?

Q107 Helen Southworth: Yes. Can you describe how you think that works at the moment.

Mrs Barnett: Not, we think, as well as it should—simply because it is one of the powers that we have within the 12 requirements of the community penalty, because obviously there are a large number of cases where alcohol is a factor. Whether or not it is a drink-related offence, something may come out that may mean that we feel it would be a good idea to make such a referral order. We will do so when we can, but we understand that there are not the resources available for the treatment to be available in all areas of the country across England and Wales. That is a big worry.

Professor Howson: A considerable amount of resources have been put into drugs. Probably less resources have been put into those programmes for alcohol.

Mrs Barnett: We do hear quite frequently that there is some voluntary stuff going on, that people are being helped, that there are things going on. That is absolutely fine, we have no objection to that, but it is a power that we have that we would always impose, if appropriate, provided, of course, it is there for us to impose.

Professor Howson: Of course, one has to say that people have to commit a crime which is serious enough to have a community penalty. We have not lost what might affectionately in the past have been called “the town drunk” who is drunk and disorderly on a daily basis and comes before us for a frequent but very low level offence. They would not qualify for those sorts of programmes and the court could not order them. That is an issue for the wider society. We tend to fine them, and detain them until the rising of the court because they cannot pay it.

Q108 Helen Southworth: Does the magistracy get sufficient information about the availability of treatment within the local community?

Mrs Barnett: We look into it. We should have regular liaison with our local and national offender management services—probation, in particular. It is simply a fact that it is not universally available, and that does not only apply to alcohol referral.

Professor Howson: One area where it has been is drink driving, which is one that has been with us for a very long time. The introduction of the opportunity for people to get up to a 25% reduction on their ban if they attend an alcohol awareness course has, I think, been very useful and may well have helped to reduce the number of second offences in that area. Clearly there are other areas where I am sure it would have an impact on reoffending if the resources were available to do it.

Q109 Helen Southworth: You may recall that I said earlier that I have had a number of meetings in the past few years in my constituency with all the interested parties in the late night alcohol industry. The representatives of the local magistrates’ bench have attended a couple of those meetings in order to inform themselves of what the position is within the town centre. Is this something that you think would be useful, if magistrates were informed about areas, about particular hot-spots where there are particular difficulties?

Mrs Barnett: Information is what we work on, so, yes, of course. That is something that we welcome, provided the proper boundaries are in place. We cannot and must not attend meetings in order to be told that we have or have not sentenced properly or to have our sentencing influenced in any way. But, as people, we live in our local communities, we know what goes on, we go down the same high streets, we may go to some of the same places and have a drink in the evening—not necessarily at four o’clock in the morning—but general information is something that is definitely welcomed, provided, as I say, the structures are in place.

Professor Howson: I think most of us who sit in court see the consequence of it and, therefore, are not unaware of where the likely problems are. If there are cases involving violence that come in front of us, we will undoubtedly know which licensed premises or which areas they come from. But, as Cindy says, information is clearly helpful to us.

Q110 Chairman: One licensing officer submitted evidence to us that he felt the penalties which are available to you to impose on those who are in breach of the Licensing Act are insufficient to offer a deterrent. Is that your view or are you pretty content with the penalties you have?

Mrs Barnett: I think generally we are content. Something that is often felt is that, if a sum of money, if we are talking about a financial penalty, is considered low by someone who just looks at the figure, then it is marked a “derisory fine”. It is just a fact that people do not understand it. We have to consider people’s means, and therefore a fine that is related to means may not seem a lot to somebody
else and it may be an incredibly heavy penalty for the defendant. The other thing goes back to information. Depending on the type of offence, if it is a question where there is a commercial gain or there is a profit element involved, then we need to know about it. We cannot sentence according to a guess; we have to have the information. We rely very heavily on that information to be given to us in court so that we can impose the appropriate penalty.

Q111 Chairman: I do not want to detain you any longer. You have made a number of quite detailed points about the way in which the Act is operating in your evidence and obviously we will take account of those. Are there any in particular that you would like to flag up?

Professor Howson: I think two. One is the issue of a national register for personal licence holders. We raised this during the passage of the Bill. We do not think from the fact that it is not in place, that there is not one. Somebody can gain a personal licence while studying for a hospitality degree at a university, get a job in the hospitality industry in another part of the country, and then commit an offence under schedule 4 in a third part of the country, and it would be almost impossible for that police force to be able to follow the audit trail through.

Q112 Chairman: Who should do it?

Professor Howson: There are two possible ways. One is that the local government gets its act together and has a national database. The other is that personal licences are taken away from those and given to a body that is a national regulator—like the securities industry agency, which is already registering people who deal with the problems outside pubs, in terms of the bouncers and others. It is challenging, particularly in terms of the protection of the children, for Parliament if personal licence holders cannot be tracked if they move to another area. The other is that you have heard concerns about Temporary Event Notices. The fact is that I could apply for as many Temporary Event Notices as I liked for this room in the course of a year, merely because what I am applying for in terms of alcohol is the sale and not the consumption. I could apply for a Temporary Event Notice for your bit of the room, and, then, when I have exhausted that, move on to another bit of the room, and then to another bit of the room, and have as many as I like.

Q113 Chairman: Is that the case? I had a huge amount of complaints that my village hall had exhausted its allocation within the first three months.

Professor Howson: They probably were not taking the advice as to how to get around the regulations.

Q114 Chairman: If they just move the bar?

Professor Howson: If they just move the bar, because it is important to realise that what is licensed is not the consumption but the sale of alcohol and the sale takes place in a very specific place. Providing there is no crime and disorder objection, the police cannot object to it.

Chairman: I shall go back and tell them that. Could I thank you very much. I am sorry it was slightly truncated.

Tuesday 28 October 2008

Members present

Mr John Whittingdale, Chairman

Mr Nigel Evans
Alan Keen
Paul Farrelly
Mr Adrian Sanders

Memorandum submitted by CCPR

1. INTRODUCTION

CCPR is the umbrella body for 280 national governing and representative bodies of sport and recreation, which in turn represent some 151,000 sports clubs. As CCPR’s expertise resides in community sport, this submission does not address the Committee’s interest in public safety or live music.

The Department for Culture, Media and Sport estimates that around 20,000 private members clubs hold liquor licences, and CCPR estimates that 10,000 of these may be sports clubs. This submission addresses the financial and administrative impact of the Act on these clubs.

2. THE SPORTING CONTEXT

Sports clubs play a key role in local communities, providing affordable opportunities for people to participate in healthy physical activity. Sports clubs therefore contribute to health and community cohesion. Sports clubs’ bars play a major role in the social and economic viability of many community-based amateur sports clubs. Many of these sports clubs operate a bar only on competition days for use by members and visiting teams and on a relatively small scale. It is the small surplus from bar revenues that helps to keep a club alive, enabling it to invest in new equipment or improve to its facilities on behalf of participants.

Under the 2003 Act, sport and recreation clubs are treated in the same way as commercial high volume drinking venues. For example, the Minima Yacht Club, with an annual bar turnover of approximately £3,500 is now paying the same for its licence as the wine bar situated next door, which is open until 2am and whose turnover is likely to be nearer £3,500 per week. Meanwhile another club has found that its licence fee has increased dramatically even though the club bar was usually only open for seven hours a week.

CCPR believes that this is fundamentally unjust and that sports clubs’ licensing fees should reflect the fact that the primary purpose of a sports club is to provide physical activity, and that the sale of alcohol is ancillary to this.

3. THE FINANCIAL IMPACT OF THE ACT ON SPORTING AND SOCIAL CLUBS

“We’ve just completed the process of renewing our licence. The cost was £120 to the local council and £200 to the local paper for the compulsory advert. Our bar profit in a year is about £2,500 so this has taken 15% of that in one swoop.”

Danny Sillman, Treasurer Guildford Rowing Club

On 11 July 2005, Richard Caborn MP, then licensing minister, informed the House of Commons that the “vast majority of sports clubs will fall in a band between about £70 and £100”. However, evidence collected by CCPR from 2430 sports clubs demonstrates that the vast majority fall outside the lowest fee band.

Table 1

RESPONDENTS TO CCPR SURVEY

<table>
<thead>
<tr>
<th>Fee Band</th>
<th>A</th>
<th>B</th>
<th>C</th>
<th>D</th>
<th>E</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Clubs</td>
<td>271</td>
<td>850</td>
<td>1,016</td>
<td>203</td>
<td>90</td>
</tr>
<tr>
<td>Percentage</td>
<td>11.2</td>
<td>35</td>
<td>41.8</td>
<td>8.4</td>
<td>3.7</td>
</tr>
</tbody>
</table>
CCPR’s figures represent an estimated 25% of all sports clubs with bars, therefore giving the following total cost to sport in the first year of the Act’s implementation:

**Table 2**

<table>
<thead>
<tr>
<th>Fee Band</th>
<th>A</th>
<th>B</th>
<th>C</th>
<th>D</th>
<th>E</th>
<th>Overall Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Clubs</td>
<td>1,084</td>
<td>3,400</td>
<td>4,064</td>
<td>812</td>
<td>360</td>
<td>9,720</td>
</tr>
<tr>
<td>Application fee</td>
<td>£100</td>
<td>£190</td>
<td>£315</td>
<td>£450</td>
<td>£635</td>
<td></td>
</tr>
<tr>
<td>Total Fees</td>
<td>£108,400</td>
<td>£646,000</td>
<td>£1,280,160</td>
<td>£365,400</td>
<td>£228,600</td>
<td>£2,628,560</td>
</tr>
</tbody>
</table>

This table outlines that the new fees cost voluntary sport over £2.6 million in their first year. In addition to this clubs incur other costs associated with the Act including advertising in local newspapers, obtaining floor plans, and in some instances legal fees. For instance 20% of bowls clubs have incurred costs of over £1,000 as a result of the Act. These costs are excessive for clubs whose bars are open on selected occasions only.

The impact of these increased fees is demonstrated in CCPR’s Sports Club Survey 2007, to which 2022 clubs responded. The survey found that in 2006:

— 39% of all clubs reported a surplus;
— 35% of clubs reported a break-even situation; and
— 16% of clubs indicated a deficit.

However, clubs in most sports were experiencing a downward trend, with reduced surpluses compared to the previous financial year. This is indicative of increased operating costs for sports clubs, and signals a danger that more clubs will over time move into a deficit position. The increased cost of licensing fees will add to this burden. The annual renewal fees are marginally cheaper than the initial licence fees. However, the annual cost to sports clubs remains at nearly £2.3 million.

**Table 2**

<table>
<thead>
<tr>
<th>Fee Band</th>
<th>A</th>
<th>B</th>
<th>C</th>
<th>D</th>
<th>E</th>
<th>Overall Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Clubs</td>
<td>1,084</td>
<td>3,400</td>
<td>4,064</td>
<td>812</td>
<td>360</td>
<td>9,720</td>
</tr>
<tr>
<td>Renewal fee per club</td>
<td>£70</td>
<td>£180</td>
<td>£295</td>
<td>£320</td>
<td>£350</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>75,880</td>
<td>612,000</td>
<td>1,198,880</td>
<td>259,840</td>
<td>126,000</td>
<td>2,272,600</td>
</tr>
</tbody>
</table>

4. **CCPR’S PROPOSAL TO REDUCE THE COST TO SPORT**

CCPR has worked closely with DCMS to promote the Community Amateur Sports Club (CASC) scheme. Under this scheme a sports club that registers with the Inland Revenue as a CASC is eligible for 80% mandatory rate relief. This sets a precedent for the treatment of sports clubs that could also be applied to the licensing regime.

The CCPR proposes that all sports clubs, regardless of whether they are registered CASCs, be placed in a fee band based upon 20% of their rateable value. This would mean that:

— many of the 47% of clubs in Band B (all those with a rateable value of £21,500 or less) would move into Band A;
— the 5% of clubs in Bands C and D would move into Band B; and
— no club would be likely to remain in Band E.

This solution builds upon existing practice and offers due recognition of the fact that sports clubs are not profit-making bodies, but instead make a valuable contribution to the health and quality of life in the community.
5. 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

Clubs responding to CCPR’s survey were keen to offer their views on this issue. It is clear from this feedback that rather than reducing bureaucracy for sports clubs, the Act has led to a significant administrative burden for club volunteers during its first year of implementation:

“The new scheme required a considerable amount of time and expense to complete and the generation of various documents all of which had to be copied eight times and posted to the different regulatory bodies some of which were in the same building! The whole exercise was over bureaucratic even to specifying the colour of the paper for the notice for display outside the Club!”

“Race days and times are dependent on the tides, which of course vary from year to year. As we could not stipulate these dates, we were not able to apply to open for our mid-week evening races.”

“The application was more onerous and costly than previous applications/renewals through the Magistrates’ Court, with a higher degree of red tape and administration. As a small non-profit making sports club, the costly and extensive administration process is unjustified in a situation such as ours.”

“A complex process which probably took about 100 hours of my time, which as a volunteer is free but would have cost £2000 at least if professionals had been involved.”

“The admin procedure has increased significantly to complete this process. In our case it has been overseen by the club treasurer, who is retired, and the bar manager, who is a postman and therefore free to attend meetings with the Council after 2pm.”

“Despite an absolutely clean operating record we had to convince both police and a local councillor that we simply want a bar for members and guests, and do not wish to operate a drinking club! To achieve this we had to use the services of a solicitor and a barrister, hence the high cost of application.”

Whilst this administrative burden is not repeated year on year, the Act does bring with it other burdens. For instance:

— at present a club wishing to make any change to its premises—even if unrelated to the licensed area, such as an alteration to the changing rooms—must apply for a full variation to its licence. This has to date been a costly and expensive process for both clubs and local authorities. Fortunately a Legislative Reform Order now being proposed by Government will amend the process for “minor variations”, making it more streamlined and less costly; and

— The Government is currently consulting on a possible code of practice for responsible alcohol sales. Should such a code be introduced its requirements would need to reflect the capacity and nature of voluntary sports clubs.

6. WHETHER THE ANTICIPATED FINANCIAL SAVINGS FOR RELEVANT INDUSTRIES WILL BE REALISED

As outlined above the Act has led to increased financial costs for sports clubs, rather than cost savings. The total annual cost to sport of maintaining liquor licences within clubs is £2,272,600. This is a significant sum that community sport can ill afford to lose.

7. CONCLUSION

The Licensing Act 2003 has placed a significant financial and administrative burden on sports clubs. Its major flaw is that it does not distinguish between commercial, high volume drinking venues and voluntary, not for profit sports clubs, in which the sale of alcohol is an adjunct to the provision of sporting activities.

CCPR believes this situation can be rectified by calculating the licence fees of Community Amateur Sports Clubs (CASCs) upon 20% of their rateable value. This would be commensurate with the 80% mandatory rate relief provided to CASCs. This approach would reduce the annual cost of licensing to sports clubs to just £454,520, at a cost of just £1,818,080 to the Government.

CCPR would welcome the opportunity to provide oral evidence to the Committee in support of this evidence.

September 2008
Memorandum submitted by Committee of Registered Clubs Association (CORCA)

INTRODUCTION

1. I am responding on behalf of CORCA to your invitation to submit its views on the effects of the Licensing Act 2003 for consideration by the Culture, Media and Sport Select Committee.

CORCA comprises the club organisations listed on this letterhead which together represent about 4500 affiliated non-profit making private members’ clubs in England and Wales. These are working men’s, political, ex-service, coal industry welfare clubs; and a small number of West End Clubs on whose behalf the Association of London Clubs may be making a separate submission.

2. Our comments on the five aspects about which the Committee seeks views are as follows:

(i) Public Nuisance etc

From a necessarily limited clubs perspective we are not aware of any significant change in regard to public nuisance, night-time offences, or public safety. The commercial sector, regulators, police and the general public participating in the evening and late night urban economy could more meaningfully contribute a view. Some of our clubs have experienced an increase in regulatory action in response to alleged noise disturbance.

(ii) Live Music

The performance of live music in CORCA member clubs has not lessened by virtue of the direct impact of the 2003 Act; more particularly it has reduced because of cost cutting enforced by a significant downturn in clubs’ financial capacity due to a variety of factors including Licensing Act costs.

(iii) Clubs—Financial Impact

(a) The main financial impact of the Act on our clubs arose from the requirement to convert from registration under the Licensing Act 1964 to authorisation by Club Premises Certificate (CPC). This involved producing premises plans, advertising and lengthy form filling. It fell to CORCA organisations to educate their member clubs in the relevant procedures but some clubs resorted to legal practitioners at additional cost. A club could well have incurred associated costs (over and above Licensing Act fees) of up to £1,000.

(b) The 2003 Act fees structure based on rateable value makes no distinction between commercial premises and not for profit private members’ clubs. A typical club falls into Band B so the fee for migrating from the 1964 Act to the 2003 Act was £190, with an annual fee thereafter of £180. This is massively in excess of the £16 payable previously to renew a 1964 Act Registration which magistrates had discretion to grant for up to 10 years duration. Our understanding is that the Elton Committee’s review of fees concluded that they should be further increased across the board by about 7% from 2007–08, though as far as we are aware Ministers have yet to respond. We appreciate that fees are intended to effect full cost recovery but question the blunt instrument approach adopted, based apparently on the purported savings in administrative costs to licensees of £99 million a year (DCMS evaluation paper March 2008). We would contend that little if any of this saving accrued to clubs. The merger of several licensing regimes into a single uniform system mainly benefited commercial operators, the principal gain being the demise of public entertainment licensing which, given their private character, rarely applied to CORCA clubs.

(iv) Bureaucracy

(a) The Act is in our view significantly more bureaucratic for clubs than the old registration system and its requirements involved a huge culture change. The forms are lengthy and not user friendly for lay people who run clubs; they were never “road tested” on the user population. Notices of applications must be displayed at the applicant premises for public viewing, the application advertised in the local press, and premises plans drawn up and submitted to the licensing authority. Each application must also be copied to several “responsible authorities”. The main derogation for private clubs is that they are not required to have a “designated premises supervisor” (DPS) holding a personal licence; and there are now moves afoot to bring in a “minor variations” procedure provided the variation concerned does not impact adversely on the licensing objectives.

(b) To assist financial viability CORCA clubs make use of the Temporary Event Notice (TEN) facility eg for non-member events; they also organise fund raising events on behalf of charitable and community causes. The Act’s quantitative restrictions eg maximum of 12 TENs per calendar year is in our view unnecessarily restrictive and some of our clubs therefore apply for premises licences to run alongside their CPCs. This involves additional application costs, the full licence application procedure, the acquisition of a personal licence for a DPS and a doubling up in statutory fees.
We also question the rationale for restricting a club to five TENs per individual signatory which means that a club utilising the full number of TENs in a year has to involve three different officials as signatories.

In the club context where all events on the premises are within the control of the committee, it would be logical for a single official eg the club Secretary to sign all 12 notices. The present requirements are unnecessarily bureaucratic for clubs although they may be justified for other premises eg village halls to prevent a single individual or group monopolising an entire year’s entitlement.

(* Anticipated Financial Savings*)

As stated in (iii) above we do not accept that the substantial savings projected will accrue to our clubs, quite the reverse as the impact of the Act on them has been regulatory rather than deregulatory with significant additional costs.

*September 2008*

**Witnesses:** Mrs Brigid Simmonds OBE, Chairman, Central Council of Physical Recreation, Mr Kevin Smyth, Secretary, Committee of Registered Club Associations and Mr Barry Slasberg of Kingsley Park Working Men’s Club, gave evidence.

Q115 Chairman: Good morning and welcome to this, which is the second session of the Committee’s inquiry into the Licensing Act 2003. We have three parts in this morning’s session and for our first part I would like to welcome Brigid Simmonds, who is the Chairman of the Central Council of Physical Recreation; Kevin Smyth, the Secretary of the Committee of Registered Club Associations. Barry Slasberg, which club do you represent?

Mr Slasberg: Kingsley Park Working Men’s Club, Northampton.

Chairman: Just before we start I think there are a number of declarations. I would like to put on the record that I am Vice President of the Maldon Cricket Club, which does gain some of its income from the sale of alcohol.

Mr Evans: I am President of the Clitheroe Wolves.

Paul Farrelly: I am an Honorary Vice President of the Finchley Rugby Club and Secretary of the Commons and Lords rugby team, the latter of which profits out of absolutely nothing.

Mr Evans: I am also Vice Chairman of the All Party Beer Group.

Q116 Chairman: Perhaps we could start with the general principles underlying the Act. It was intended that the Act would deliver a streamlined procedure, clearer objectives and greater democracy. Do you consider that it has achieved those objectives in terms of your own experience?

Mrs Simmonds: It has probably achieved those objectives overall. I think it would be difficult to argue objectively that having more local democracy and more involvement with the community was not a good thing; but if you had a licence which only cost £16 and could last for up to 10 years and you are now paying the sort of fees that we are paying it would be difficult to think that this is a streamlined system which is better. If you look at the licensing objectives of crime and disorder, public safety, public nuisance and protecting children from harm, sports clubs do not contribute to any of those. In fact you could almost argue the opposite, that sports clubs provide an antidote to crime and disorder.

Mr Smyth: I virtually agree entirely with Brigid. It was something that we never really wanted at working men’s clubs and sports clubs. You cannot argue with the basic idea of why it was wanted but the actual benefit as far as clubs go has been minute and the costs have been horrendous.

Mr Slasberg: I would just add to that that as far as my club is concerned all those objectives have been the objectives of our club since time immemorial; we were formed over 100 years ago and we have a very comprehensive disciplinary system which ensures that our members are responsible both within the premises and outside the premises—always have done. This adds nothing but we fully concur with all the aims of the Act, which we are quite proud to have been practising since before it was conceived.

Chairman: Perhaps we can go now to the impact on your own specific clubs, and if Nigel could begin.

Q117 Mr Evans: Is the general view that you are opposed to this new licensing regime because we are where we are and that is basically the fact. It clearly has a cost to it, which is much higher than the old cost. So, taking the view that we are where we are, do you think it is right that the full costs ought to be met by those who have the licences?

Mrs Simmonds: I think the full costs should be met by the licences but I think it was the LGA who said in your evidence session a week or so ago that what is happening is that the smaller premises, the community premises are effectively subsidising the larger clubs. If you look at the ongoing annual fee, you are talking here about paying, if you are in category B, £295 a year. If you are not on the risk register, you are not renewing your licence, the licence goes on in perpetuity, so what are you paying all that money for on an annual basis as a club where you are not causing nuisance and you are not creating crime and disorder? We just do not have those sorts of problems. So you are paying this ongoing annual fee and more fees if you want to make a variation to your licence for really almost nothing in return, and one has to question why that is the case, which is why the CCPR has argued quite comprehensively that the clubs should pay at a much more minor level, effectively as they do as CASCs, which is based on your 80% rate relief which you get if you are a community amateur sports club.
Q118 Mr Evans: Would you think that you would have to pay perhaps a bigger sum to initially get the licence and then reduce the sum?

Mrs Simmonds: We are past that stage, Nigel. You have the licence—everyone has the licence; they have been through transition and you do not on the whole create many more new sports clubs. So we are now talking about the ongoing burden of this annual fee that you pay on an annual basis. We have argued all the way through that either we should have all CASCs in category A, or that all clubs should actually pay on the same basis that they get rate relief, which is 80%, so they only pay 20% of the annual fee, which we think would be a much fairer system.

Q119 Mr Evans: So you think all this licence money that people have to pay on an annual basis is just there to prop up the bureaucracy that is not doing much?

Mrs Simmonds: It would be difficult to argue with that.

Q120 Mr Evans: My next question was going to be about the fee increase which is proposed. As you know, Sir Les Elton has recommended a 7% increase per year for three years, which would be dramatic; so I think the question is redundant to be frank.

Mrs Simmonds: Can I just say, to do the sums on that, that if you had 10,000 premises you are talking about an increase of £160,000. That is an inordinate amount of money for a sports or any other club which is providing effectively very much a social service which, in our current climate, the need we have connectivity at that local level, is the service that we are providing here.

Q121 Chairman: Brigid, do you accept the principle that the fees paid by the whole estate should meet the costs? In other words, you would adjust the structure of the fees so that amateur sports clubs did not have to pay so much, but another part—maybe bigger establishments—would have to pay more to compensate?

Mrs Simmonds: I would write off the costs of introducing the Licensing Act because that is where the local authorities saw this great increase in costs—taking on from 155,000 licences from magistrates was a big undertaking. Now what we are talking is ongoing reviews, looking at risk registers, a certain amount of inspection and I think it is that bit that should be based on a smaller amount and less fees for clubs.

Q122 Mr Evans: I want to scratch the surface now as to the impact that this is having—the new charges, the new licence applications, the time it takes to apply and all that sort of stuff, as compared to the old system, so that we know the full impact that this new regime is now having on clubs.

Mrs Simmonds: We have this annual fee situation, so you have that. You then have applications in some cases for Temporary Event Notices. One of the problems that clubs have, particularly if they are weather-affected, is how do you apply 10 days in advance for a Temporary Event Notice if you are affected by the tide or the weather as to whether the event is going to go ahead at all? That is something by which sport is particularly afflicted. If you are a sailing club and you have to wait for the tide on a particular day then it is quite difficult to predict in advance whether it is going to be on this day or that day. So that system is quite complicated. The other problem we have is that if you make any variations at all you have to reapply; you have to reapply for your variation. It is dependent very much on your size but let us say it is £190 if you fall into category B for your variation, you have to re-advertise in the newspaper and you have to have your plans redrawn and re-submitted. So those are the sorts of burdens that I think sports clubs bear.

Mr Smyth: Exactly the same for us—exactly. One thing about the Temporary Event Notices that I have never understood ever since the Act came out, the maximum you can have is 12 but one club official—shall we say the Secretary—can only apply for five and then perhaps the Treasurer has to apply for another five and the President for another two, and that all struck me as absolutely irrational. I still cannot understand why that happened.

Q123 Mr Evans: Is this Temporary Event Licence just a figure plucked out of the air? Does it bear any resemblance to anything or do you think that for most clubs 12 is probably okay?

Mr Smyth: No, we would prefer perhaps a figure of 20, something like that.

Q124 Mr Evans: But you have just plucked that figure out of the air too.

Mr Smyth: I have but I know that a number of clubs say that 12 is not enough. Barry obviously is a Secretary of a club.

Mr Slasberg: For my own club we, I must admit, do try and ensure that we do not open to the public at all. We are very jealous of our private status and therefore we do not encourage public events. However, for many of the clubs in my area they do have a problem; you have to get people in and the Temporary Event Notice is a very useful tool to have. Yes, it would be helpful to a lot of clubs if they could have more than 12 in a year, simply on a survival basis because we are in recession, as you all know—talking of the club world—and what we all need to do is to be able to innovate. Innovate means trying new things and trying new things can be very difficult if you have a club premises certificate that is limited, and if you want to try something new you do not know if it is going to work and you have to go through all the rigmarole of getting permissions and then you might want to drop it after three months because you have had your trial and it does not work. Another thing that has come up—certainly with my club we have excellent relationships with our neighbours, we have excellent relationships with all the authorities but as soon as you put something on a lamppost says “If you have any problems please put them forward to the local council” they come out of the woodwork. Certainly my club, when we went through this procedure, had a load of
complaints. I spoke to all the complainants individually and said, “Why have you never come to the club?—We never thought we could.” So this, quite honestly, although it is a good thing to allow people to make complaints, does encourage people out of the woodwork who have no basis of complaint and waste both the time of the officials and of the club and cause a lot of sleeplessness.

Q125 Mr Evans: So the figure of 12 should be scrapped and it should be dramatically increased. Indeed, do you think there should be any limit?  
Mr Smyth: I think we probably need a limit because otherwise it may not be a private members’ club any more and that obviously is what we are all here to protect. So I am not saying dramatically increase but 20 would be a lot better than 12.

Q126 Chairman: But most of your clubs have premises’ licences.  
Mr Smyth: No.

Q127 Chairman: They do not?  
Mr Smyth: Very few; very, very few.  
Mrs Simmonds: That is not true for sports clubs because sports clubs do have Club Premises Licences.

Q128 Chairman: So working men’s clubs are operating on the Temporary Event Notice?  
Mr Smyth: Yes, they have the CPC and then they have the Temporary Event Notices, yes. There are probably less than 20 out of 2000.

Q129 Chairman: Following up Nigel’s question. Brigid you and indeed the Registered Club Associations have both made the point that as well as the fee which you have to pay there are a whole lot of other costs in terms of advertising, in terms of notification, in terms of maybe getting plans drawn up. What estimate have you made of the total cost of going through the licensing procedure?  
Mrs Simmonds: I am not particularly keen to be retrospective on this. I could give you lots of costs of what it costs in the first place but it is now that we are talking about—these ongoing costs of dealing with all these things. There is no evidence that advertising in local newspapers actually does anything at all and that it is read by anybody. I have always thought that that should be scrapped and in the early days when the Better Regulation Commission reviewed the Licensing Act it suggested it should be scrapped, but it is not part of the de minimis or the changes that are being proposed by DCMS at the moment.

Q130 Mr Evans: But if you scrap it how would you inform the public?  
Mrs Simmonds: You have to put a notice on the posters anyway and you have to put notices around—it is like planning permission—so for those people who are in the vicinity of your area that is a perfectly good way of doing it and, if necessary, put notices in your public library. But advertising is hugely costly; in London you are only talking realistically at advertising in the Evening Standard and so you are talking about a lot of money and then if you then have to go out and have professional help, as a lot of these clubs have had to do, then that increases your cost enormously if you have to have plans drawn up of your premises and where the bars are and if you want to make changes. In the case of sport obviously quite a lot of the whole of the sports area would be licensed—it would not only be just necessarily a bar. So every time you have to go back to the licensing authorities—the system is mad. We would very much welcome the minor variation to the procedures and obviously that would reduce the cost and that is one of the proposals, and under minor variations you would not be required to advertise for a minor variation. But taking away advertising would be helpful.  
Mr Smyth: Of course, it was rather ironic that once the Act was actually proposed and just before it came into effect suddenly all the local provincial papers’ advertising rates went up about 200% because they could see that this was a place where they could make money, and that cost clubs more than they anticipated and wanted to pay, obviously.  
Chairman: It is the case that local newspapers are in some financial difficulties and I think that they would be extremely alarmed at seeing this sort of revenue also disappearing. However, I agree that you are not there to keep local newspapers in business. Adrian Sanders.

Q131 Mr Sanders: There is also an issue that not everybody is necessarily going to be walking around and seeing notices and I think it is absolutely right that it should be advertised to a wider audience—they have a right to know. Just as with planning applications they are not just posted up on the lamp post, they also have to be advertised in local newspapers. I just wonder why you think it should be different.

Mrs Simmonds: I was not aware that planning applications had to be advertised in local newspapers but you certainly get notices and you get letters from the local authority and that might be a simpler way of doing it—you get a letter saying, “This is being considered next door and you have the opportunity to comment on it.” There is no reason why a system like that could not be introduced for licensing.

Q132 Mr Sanders: That would be helpful; I would agree with you there. We have a difficulty in that DCMS maintains that no new or additional evidence has been presented since it received the Final Report of the Independent Fees Review Panel to indicate that the Act has had a detrimental financial impact on sports and social clubs. So is there any fresh evidence, a body of evidence, a report or something that could be made available?  
Mrs Simmonds: We work very closely with DCMS, as the Committee is probably aware, particularly to promote the Community Amateur Sports Club scheme, and we did a survey of all clubs last year which found that 51% of them were either running at a loss or just about breaking even. DCMS have those
figures and, as you know, they have been working with us and the Treasury to try and enhance the Community Amateur Sports Club scheme and we will be looking at whether we can introduce gift aid on junior subscriptions, which is something that we very much want. And in many cases they have supported us when extra burdens are added to clubs because it is not only the Licensing Act, just to look at some of the ones that we are facing at the moment. We have drainage where they are trying to move from a system which was based on rateable value to the whole size of the area—that was raised by the Liberal Democrats in the House—and it could be a 318% increase for clubs in those sorts of costs, which would cost £10 million a year. We have CIL, the Community Infrastructure Levy. At the moment all these questions that are being asked in the House suggest that sport is going to have to pay CIL, which I think is again absolutely mad. Not for profit organisations, they may exempt charities on the front of the Act but that of course will not count for either social clubs or for sports clubs even though they are not for profit. Music—we have licences for composers, £370 a year; PPL £116 a year for publishing. It is cumulative; it is not only the cost of the Licensing Act but DCMS have plenty of evidence which makes it absolutely clear that community sport needs some help, and in straightforward government terms if we are going to introduce this Five Hour Offer for sport in schools then you need help from clubs. We cannot achieve that within the curriculum, so there is a real advantage in helping community sports clubs which, exactly like Kevin’s clubs, are run, on the whole, by volunteers.

Q133 Mr Sanders: Are you aware of any work being undertaken in that area—contact between DCMS and representative bodies—to see how the voluntary clubs can help government deliver that sports target? 

Mrs Simmonds: The Government is helping us very much with talking to the Treasury about this in terms of a gift aid scheme on junior subscriptions—they have done a lot of work there. We would like to have more contact, probably with the Cabinet Office, which is responsible for the sector. There are a lot of very good words talked about it but in this economic situation in which we are in, the cost of gift aid would probably only be about £4 million; so we are hoping that the government might consider that. Some of the other costs are greater. As ever, it is the burden placed on clubs by other government departments which you then have to pick up and run with. We would be delighted if someone would take up this drainage scheme problem that we have because that will be an ongoing, huge burden, particularly on sport because and all the pitches that we support.

Q134 Chairman: What do the Registered Club Associations think?

Mr Smyth: We obviously have not got into discussion on the same lines as the sports community because they provide sporting activities for youngsters, which we do not do to anywhere near the same extent. We do obviously have junior football teams and that sort of thing, representing a number of clubs—I can remember that Barry’s team actually won a trophy only last year. It is, as Brigid said, cumulative. I know it is not your responsibility but the Gambling Act came up with something whereby—

Q135 Chairman: It is actually! 

Mr Smyth: With gambling, if you are a club that plays bingo over so much then all of a sudden you are faced with a £2000 fee per year and that is going up by another £400 this year. It all builds up and up and up. Brigid said she had 51% of her clubs that were running at a loss or just about breaking even. I believe it to be true that we are about 80%, struggling—really struggling. More clubs are leaving the union because they are just about to cease. I had one yesterday from the Liberal Club on the Isle of Wight, “We are very sorry to say that after 105 years of existence we just cannot afford to go on.”

Q136 Chairman: I should have perhaps also added at the beginning that I am a patron of the Maldon Constitutional Club and they are finding life very difficult from a variety of different pressures—obviously the economic recession, compounded by the smoking ban, which has had a very damaging effect. So do you have any idea as to the numbers of clubs that are going out of business because of all these pressures?

Mr Smyth: Last year and for previous years we have lost about 50, so I am not going to say it has suddenly happened—it has been a steady drip of perhaps losing 50 clubs. But purely in my organisation, which is the working men’s clubs, I anticipate about 150 not paying their fee and if they do not pay their fee then within two or three months that is a sign that they will not be in existence; so it has tripled.

Q137 Chairman: Amongst all these different pressures how significant do you think are the additional costs resulting from the Licensing Act?

Mr Smyth: It adds up. Yes, it is not as great as the smoking ban but again it all accumulates and eventually you are at the top of the cliff.

Mrs Simmonds: I think the licensing fees are a significant part of that—moving from £16 to £200 and something is huge.

Mr Slasberg: If I may, for me, I think there is a great change that I have seen over the years in that our clubs have always been recognised as non-profit making and serving the community. More and more as legislation goes through we are being put on an even playing field with commercial business, and I think that is what is killing us, quite honestly. We provide alcohol but whatever comes out of that goes to our members, it is purely for them, whereas a pub is in there for profit and nothing else. It is almost like saying that the table tennis league should play the same rules as the rugby league because they are both sports. It is a nonsense and it is a nonsense that non-profit making clubs should be treated in the same way as profit-making licensed premises because they are a wholly different animal, which used to be
recognised but more and more, I feel, is not being recognised, and that is one of the major planks which is putting our clubs, which are community based and are there serving the community, very much at risk, I believe.

Q138 Chairman: Can I just explore that with you? The CCPR will make the case—indeed have made the case—that sports clubs are delivering government objectives, which is healthy living and increasing sports participation, and generally are of huge benefit to the community and they need on licence sales to support them. The working men’s clubs are not able to make quite the same claims in terms of overall benefit, are they?

Mr Slasberg: I believe that the working men’s clubs can put forward a very great claim for work within their communities. For instance, we have a brain damaged group that use our club; we have kidney patients who use our club, and anybody else can come in. We also provide facilities for families, a safe haven that they can come to because of our policing of the use of alcohol. I am not saying that nobody gets drunk in a working men’s club but because of our policing and requirement for reasonable behaviour and the threat of expulsion for bad behaviour these things mean a lot, because we have generations of people coming to the same club. So whilst people are being put out of work they do have somewhere to go where they can have refreshment and have it cheaply; they can just watch TV and have a glass of water if they want—they are not obliged to buy within the club. So people can get out of their home environment, out of the stress of their own financial burdens into somewhere where they can communicate with each other and just relax. It is not the fantastic image of the sports clubs. I will give you that, but it is a vital and very urgent need that our clubs are maintained because we are the centre of the community and if you lose that then where do people who are stressed, distressed and poor safely go? I do not think there are many places that are around nowadays that they can use.

Mrs Simmonds: Just to finalise that discussion, the impact of the licensing cost increases is the same as 10 adult average club memberships. The average rugby club has 80 adults, so this equates to a 12% reduction.

Q139 Alan Keen: I do not want to get too far away from the actual licensing itself but you have been talking about the situation overall and even before the credit problems that we are getting now, licensed premises—whether clubs or pubs—have been facing difficulties because of the smoking ban and that sort of thing. Are the breweries any less helpful to clubs than they used to be because their own premises are struggling? Have you noticed any difference?

Mr Slasberg: I think breweries are beginning to fight for the business now because they are definitely out for survival themselves. Having said that, the majority of our clubs are run by amateurs—they are run by working men and working women with not necessarily a lot of professional expertise. The breweries are out to make money and they will help if you go to them but some people just do not know how far they can go to them. We are not professionally run, although we do have some support from our head office—we do have training programmes that people can go on—but you put a sales executive from a big brewery up against a clothes salesman from one of the local stores and that rep is going to have a much more likely chance of coming out on top of his argument at the end of the day. Countering that slightly, the breweries do want places to stay open because they want to sell their beer, but they want to get the most out of them and I do not think that we have the expertise to get the most out of the breweries sometimes.

Q140 Alan Keen: I visited a place on Saturday afternoon—only drinking coffee—at the request of a tenant and the tenant was saying that the brewery was getting pretty tough with him and he thought that unreasonable. His pub is quite close to managed houses of the brewery itself and it did look as if the breweries were taking pretty strong action to look after their own core business, and that is why he was asking the question. Here we are obviously talking about the Licensing Act and we must not stray too far from it, but the point you have been making about the contribution that working men’s clubs make and sports clubs, of course, do you think that some time in the future this Committee maybe should look at the whole business that we are in danger of making it difficult for clubs to operate. We know that the licensed trade helps to support clubs of all sorts and you give social support and sports clubs contribute to healthy living, but do you think there is a danger of us going on a downward spiral socially?

Mrs Simmonds: Moving back to the Licensing Act, we have recently been faced by this Safe, Sensible, Social, which is a consultation from the Department of Health and with it came very much at the end proposals on a mandatory code which would have absolutely crippled sport and social clubs. Some of the things that would be introduced are that we would all have had to do mandatory training; we would have to have sensible drinking messages in entrances to bars and all premises; where no medium must be used to advertise alcoholic drinks if more than 25% of its audience is under the age of 18. Effectively you would stop any advertisements at any football, rugby, cricket or other spectator sport if that was introduced because of course over 25% of them are under the age of 18—that is why we want to encourage young people to go and watch and support sport. You would have to have information at each point of sale saying that it is illegal to sell alcohol or buy alcohol for those under the age of 18. Why on earth do you need all of those signs? We all know it is illegal to sell alcohol under the age of 18. And you would be required to consult the police every time you had either a live or recorded event on television. I cannot imagine what a waste of time that would be. So we are faced, Alan, with being tarred with the same brush of any sort of alcohol premises. I clearly believe that we should be making these things targeted. I think the Department of
Health has recently looked at, in particular, the northwest and perhaps people over the age of 50 who are drinking too much, and targeting those particular people. If we are going to take any particular action—and Kevin and I were discussing this yesterday—it would probably be to introduce minimum pricing because that is one of the big problems for us all—people going off and buying it more cheaply in the supermarkets; and I think we would also be in favour of stopping promotions. So targeted action against people who are drinking too much—do not take action against those who are providing premises, do not drive drinking underground and providing premises where people, as you have rightly said, Barry, can come and drink safely and sensibly and under certain restrictions and within a social atmosphere.

Q141 Paul Farrelly: I have read the suggestions that the CCPR, for example, has suggested that CASC clubs—and I have been involved in promoting the CASC scheme here at Parliament and in my local community—should be a special category identifiable and exempt or the subject of rebates. We have heard that working men’s clubs, for instance, might be a category. Is this not just a nibbling around the edges trying to find definitions of establishments that should be treated differently but that would be subjected to more bureaucracy? Should not the regime just be overhauled so that if you want to delegate these decisions to local councils you give them the power to make—their democratic choice—certain places exempt or not? So that they have the power to do that without bureaucracy and if they wish then to bear the cost themselves then it is up to them.

Mrs Simmonds: I think you would suffer very badly from lack of national consistency. I think that would be the concern about working with local authorities—some would do it, some would not. The great thing about the CASC scheme is a scheme which is completely waterproof—you are either a CASC and if you are a CASC you have to follow various Treasury guidance about the charges that you pay, what your charge is in terms of subscriptions, about various things that you do within your club—you have to be truly voluntary. It is a system that is there. I would be much more in favour of doing that. We are all part of the club premises, so exempt all of those or give them a reduced fee—you could easily do that within the Licensing Act. I think giving discretion to local authorities would just lead to different arrangements around the country. If I could give you an example where you have a scheme where local authorities can, on a discretionary basis, reduce rent relief for community clubs whether a CASC or not. Some do it, some refuse to do it; it is not a system that works well.

Mr Smyth: You can have a club on one side of the street getting some relief and the club on the other side does not.

Mr Slasberg: I am going along with these guys!

Q142 Paul Farrelly: I am a member of the Halmerend working men’s club in my constituency—it is one of the clubs I am a member of—but this is one small rural area. I use the Wood Lane Cricket Club and the Audley football club amongst many of the small sports clubs in the area. But I also use regularly the Gresley Arms, which is a village pub, which would rightly complain if those other places around the area were treated differently when it was struggling to survive. So there is a real difficulty. If my local council wanted to say, “Actually we wanted to promote the existence of village pubs, therefore we will give the Gresley Arms and other places—not those pubs in the town which take enough money and quite often are the cause of antisocial behaviour—an exemption; likewise we will give Halmerend working men’s club an exemption because we want to promote working men’s clubs, and sports clubs because we think that sport is important as well.” So what is wrong with that?

Mrs Simmonds: I would prefer that you gave the club premises’ certificates the exemption and then gave them the ability to make that decision about rural pubs, because if you look at the figures that are coming out of the BPPA five premises a week are closing and, unfortunately, if you are not careful it is the wrong premises, the rural premises that are closing down—it is not necessarily affecting so much the high street. So, no, I would be very much in favour of that system working for the rest of them but I would be more in favour of us having an umbrella encompassing exemption based on the fact that we are sports and social clubs with club premises’ certificates.

Mr Evans: For the record it is actually five a day.

Q143 Paul Farrelly: There are three Legislative Reform Orders which are being contemplated now. Are they just again nibbling at the edges or do you see them as a vehicle, particularly with the certain as yet to be defined activities from the regime as a possible way forward?

Mrs Simmonds: One of them would not really affect us because we do not have designated premises’ supervisors. I think the minor variations would be hugely helpful and I have already talked about that. The de minimis activities concerning music which are not yet public exactly what is being planned, again it would be helpful as far as all of us are concerned.

Q144 Paul Farrelly: Have you given some thought as to whether now is the appropriate time to revise this or should the whole regime be looked at in total when the government finally comes round to the controversial review of the rateable values around the country?

Mr Slasberg: I think we are getting to a situation now where certainly within the next year or two things are going to become very, very critical. I can only speak for the working men’s club and I can see the arguments for the local pubs and what have you; but from the point of view of the working men’s
club, a non-profit making club. I believe it is critical now that something is done to reverse the trend to use us as a form of income and to positively encourage the expansion of our activities. I believe it is a vital social necessity. You might say it is picking around at the edges—picking around at the edges maybe to start with, but it is going to need, I think, a drastic overhaul long-term to get things right. I know that you cannot do all things at one time but we are moving in the wrong direction legislatively, I believe—we are becoming more and more encumbered with rules, which means that we cannot get the people to manage our clubs because they are afraid. We have a new penalty regime coming in from the Inland Revenue, which scares everybody silly, from next year onwards. The legislation is stopping people from wanting to help in non-profit making clubs, whilst at the same time demanding that the running of these clubs are far more detailed and intricate than is necessary, I believe, to the good running of the clubs and to the good welfare of the members.

Mrs Simmonds: I would not be in favour of yet another Licensing Act. I think we have a Licensing Act that works; I think local authorities and the police make it absolutely clear that it works. We have to use the powers that they have in the Act against premises that are causing problems, and stop every other government department trying to interfere and making such a huge health issue with a whole series of things like units, that no one in the public space understands or actually believes on a daily basis is causing them individual harm. So, no; do things for the clubs and do things for sports clubs under the existing Act, and there is plenty of space to be able to do that. The only thing I would argue about is these Legislative Reform Orders take for ever.

Q145 Paul Farrelly: One final question for Mr Smyth. We might have a perception problem really if we start doing special favours for political clubs like the Maldon Conservative Association or the Liberal club in the Isle of Wight; do you agree?

Mr Smyth: There is a good number of political clubs. Philip Smith behind me is the Secretary of the Conservative Clubs and he has 1100. There are 2200 working men’s clubs, 750 British Legion; so in total there is a hell of a lot. You obviously cannot discriminate between one political club and another but most of these political clubs are still not for profit.

Mrs Simmonds: As long as you do it for all political parties!

Chairman: That is all we have for you; thank you very much.

Memorandum submitted by the Association of Circus Proprietors of Great Britain

EXECUTIVE SUMMARY

— The experience of the Licensing Act on circuses has been one of unremitting expense, unnecessary bureaucracy and a level of inflexibility which severely restricts the operation of a small industry. It cannot be acceptable that, out of the leisure and entertainment sector, circuses alone should be subjected to such excessive expense.

— Licensing has not added anything to Health and Safety requirements and circuses are subject to the same Local Authority inspections as they were before the Act.

— Licensing has brought no public safety gains; circuses, unlike theatres and many other forms of entertainment do not (with one occasional exception) sell alcohol at their performances.

— The administrative burden placed on circuses under the Licensing Act is far greater than that placed on permanent premises and is out of all proportion to any possible benefits to the community from the licensing of an activity which never previously caused any problems.

— The financial burden placed on circuses is severe and cannot be justified; the main financial burden arises from the inflexibility of the licensing system.

— Many Licensing Officers do not understand why there needs to be the licensing of circuses when there had not been a problem in the past.

— It is inexplicable that circus, a traditional family touring entertainment, is licensable under the Act when fairgrounds, the other traditional form of travelling entertainment, are not.

— Simple administrative and/or legislative solutions exist to address this issue and these are outlined in Section 14 below.

1. THE ASSOCIATION OF CIRCUS PROPRIETORS (THE ACP)

The ACP, founded in 1932 and being a Registered Employers’ Association, is the recognized trade body for the circus industry in Great Britain. It is the organization consulted by the UK Government and Regional Assemblies as well as other bodies such as the HSE on matters relating to circus. It includes in its membership most of the established touring circuses in the UK from the very largest to some of the smaller circuses. The ACP is seen as the lead body for circus and much of its work benefits the whole of the industry and not just its members.
2. **The Circus Industry**

Members of the ACP operate with circus tents having a seating capacity ranging from 250 to 1,000 people, although most are in the 600 to 1,000 seating capacity range but this capacity will only occasionally be reached. Most touring circuses operate a season from early March to early November, visiting a different town each week and sometimes, in the country areas, visiting two towns in a week. Most circuses will visit approximately 40 different towns in a season. The tour of the circus, (the route) is carefully planned by booking the circus sites two or possibly three years in advance and is then arranged in a sequence which minimizes the journeys between towns and takes into account the nature of each of those circus sites, eg, to fit round local events or to ensure that a site which is a local authority park is used in the summer months when the ground is hard. Health and Safety at travelling circuses, both as a place of work, and more importantly as a place of public entertainment, are the responsibility of the District Councils and the London Boroughs and most weeks circuses will undergo an inspection by the authority's Environmental Health Department. Circuses, unlike theatres and many other forms of entertainment do not, with one occasional exception, sell alcohol at their performances. Circus performances end some time between 9.30 and 10.00 pm.

3. **Licensable Premises used by Touring Circuses**

Circuses use their own tent, seating and equipment which they bring on to the circus site. These sites may be parks or other open spaces owned by local authorities or may be privately owned sites such as race courses, exhibition grounds etc.

4. **Circuses Pre the Licensing Act 2003**

Prior to the Licensing Act, circuses were, and had always been, an unlicensed entertainment. The most recent statutory authority for this was in the Local Government (Miscellaneous Provisions) Act 1982 and the London Government Act 1963. There is no record of the absence of licensing having caused any problems or any suggestions that circuses needed to be brought into a licensing system. Circuses are essentially a sedate family entertainment and similarly there is no record of them causing a nuisance. Local Authorities were content to rely on their powers of inspection of circus tents under the Health and Safety legislation.

5. **Consultation on the Licensing Act 2003**

In 2000 the ACP, as the consultative body, received the consultation document on licensing “Time for Reform; Proposals for the Modernisation of our Licensing Laws”. The ACP asked The Home Office if it now intended to license circuses and received a response that The Home Office had not considered circuses. After the then position on absence of licensing was explained The Home Office responded in writing that it did not plan to include circuses in the scope of the White Paper or any future legislation. The ACP relied on that statement and made no further comment. When the draft Licensing Bill was published it was found that it was unclear from the definitions whether circuses were caught by the Bill but surprisingly there was no specific exemption for circuses. Initially letters to the Government went unanswered but eventually the DCMS which then had responsibility for the Bill responded that the Government had changed its mind and was now proposing to license circuses although not fairgrounds. Unfortunately, it had failed to inform the industry and there had been no opportunity to make representations. The Government had failed to follow the procedures laid down in the “Principles of Good Regulation (2000) or the Cabinet Office “Code of Practice on Written Consultation”. The DCMS refused to consider amendments to the Bill and circuses, without their knowledge and without notice or consultation had, for the first time, been brought in to a licensing system.

6. **The Implications of the Licensing Act 2003**

Although there is no specific reference in the Licensing Act to circuses, or authority for licensing them, the DCMS in its Guidance Notes issued in July 2004 advised Local Authorities that aspects of a circus performance amounted to regulated entertainment and circuses were licensable, although this interpretation is far from clear in the wording of the Act. Circuses which were using a different open space for one week in most of a year were brought into a system which was designed to license permanent premises where the primary objective for most of them was the sale of alcohol.

Circuses, to their surprise, found that they now needed to apply for a licence for every site they were intending to use. In most cases these had to be full premises licences because the number of people and trading days permitted under a TENs is inadequate. Many circuses tour the country on a three year cycle which meant that, in the course of that cycle, they needed over one hundred licences. The DCMS was not clear as to whether, if it was the site, the open space, which was to be licensable or the temporary structure, the tent. The DCMS referred to compliance with Health and Safety requirements but it was pointed out that the circus was already subject to stringent Health and Safety inspections from the Local Authorities. The DCMS encouraged Local Authorities to license their own sites for the benefit of circuses but the take-up was small as many Local Authorities either did not have the time to do it or did not want the responsibility of holding the licence or were unclear as to what the requirements were, in licensing terms, for a circus. This immediately gave rise to practical problems. Circus tents are subject to wear and tear and need periodic replacement. While all circus tents are similar, individually the replacement tent can be slightly different which leads to slight changes to the internal lay-out of the seating, etc. ACP members have, in many cases, come to an arrangement with the local licensing officer that drawings of the tent would be submitted for approval not less than 28 days before the actual visit but like every other aspect of the licensing of circuses this isn’t satisfactory. Most circuses are comparatively small family run businesses where all of the administration is carried out in a caravan. The burden of dealing with the volume of paper work involved in multiple premises licence applications on people who are essentially practical, rather than administrative, workers is intolerable. The procedure requires notice of the application to be fixed to the premises which is not a problem in the case of a public house but is extremely difficult to comply with in the case of an open space. The notices which need to be fixed to trees or fences are an immediate target for vandalism and if they are displayed at height so as to be out of reach then the public can’t read them. At the time of the application the circus may be operating 200 miles away and has no means of checking whether the notices are still displayed. The administrative burden placed on circuses under the Licensing Act is far greater than that placed on permanent premises and is out of all proportion to any possible benefits to the community from the licensing of an activity which never previously caused any problems has achieved. The ACP feels strongly that if the Government had followed the consultation progress these practical difficulties could have been addressed.

8. The Financial Impact of the Licensing Act 2003

The financial burden placed on circuses is severe and cannot be justified. Circuses have the expense of applying for numerous premises licences because they use a different site each week and often different sites in the following year whereas public houses, etc. have the benefit of having to make only one application. The cost in both time and money spent by a circus proprietor in completing the lengthy application form, the publishing of the advertisement in the local press and displaying notices round an empty circus site which may be a considerable distance from where the circus business is then operating or paying to have these services carried out by a third party is unfair and is an additional cost which circuses are struggling to pay. However, the main financial burden arises from the inflexibility of the licensing system. A circus may have booked a particular site two years previously and two months before its visit will have been arranging and paying for publicity. The season of 2008 was marred by torrential rain particularly in the summer months when circus sites were expected to be dry and hard. There were numerous incidents during that year of circuses being told by the site owner only one or two days before the visit that the site could not be used because either it was water logged or was so soft that there would be irreparable damage caused by heavy vehicles. The circus was faced with an unacceptable dilemma. In previous years it would have looked to make a last minute change within that town to a site such as a football ground car park which, while not being as ideal, would have enabled them to trade for that week. As a result of licensing, it was impossible to move to an alternative site because there was insufficient time to serve notice of a licence application, even if the TENs procedure was used. The circus could not move to a different town because there had been no display of posters or other publicity for that week. As a result there were weeks when various circuses were unable to trade and had no option but to remain parked for the week. This meant that money taken in advance ticket sales had to be refunded and members of the public were left disappointed. The various expenses of staff and artistes’ wages remained the same which led to the circus making a substantial loss for that week. It cannot have been the intention of the licensing legislation to prohibit trading because it had rained heavily. In those situations where a circus was allowed to use a wet or waterlogged site it has been faced with substantial claims for reinstatement of the surface which have effectively brought that week’s trading into a loss when, without the licensing restrictions, the circus would have moved to an alternative site. In relative terms the financial impact on circuses must be far greater than any other industry sector that licensing now encompasses.
9. Temporary Events Notices

The TENs procedure may at times provide some assistance to circuses who need to change site but for the following reasons this is very limited. A temporary event requires 10 working days notice but this period of notice is too long for the circus to be aware that its intended site is not usable; a temporary event is limited to 500 people including staff and artistes but most circuses need to attract a larger audience than this, particularly at weekends, in order to cover their expenses for that week and a temporary event is limited to 96 hours but circuses traditionally trade and will have advertised to do so, for 6 consecutive days in each week.

10. The Licensing Authorities

Circuses have now had to contend with licensing for almost three seasons and the lack of consistency in the way the legislation is applied is of concern. It must be noted that many Licensing Officers are extremely helpful and sympathetic to the plight of circuses and note that the obligation to license circuses is not clearly contained within the Licensing Act but arises from guidance given by the DCMS outside of the Act. Many of them do not understand why there needs to be the licensing of circuses when there had not been a problem in the past. Now that Licensing Officers have seen how licensing is working, a steadily growing number of them are taking the individual view that circus is not a licensable entertainment. While this view is welcome it leads to chaos as a circus may be subject to licensing in one town but exempt when visiting another town only six miles away. The ACP does not sense there is much enthusiasm from licensing officers for the licensing of circuses.


Although the DCMS insists that circuses are licensable there is no specific reference to circus in the Licensing Act and it is difficult to understand where circus falls into the various categories of regulated entertainment. The inclusion of circuses is tenuous but the DCMS insists that the correct interpretation of regulated entertainment as set out in the Licensing Act makes circuses licensable.

Regulated entertainment comprises:

- Performance of plays—It is suggested that a clown act may be a play but a display of jugglers’ skills would not be licensable.
- Live and recorded music, unless it is incidental—circus music must be incidental as the public pay to see the performance, not to listen to the music.
- Dance performances—do the actions of the juggler’s assistant sufficiently amount to dance to make it regulated entertainment?
- Any entertainment similar to live music, recorded music or dance—it is not accepted that circus is similar to any of these.
- Films—this cannot apply.
- Indoor sporting events—there is nothing competitive about a circus performance.
- Boxing and wrestling matches—this cannot apply.

It has to be asked why circus as a traditional family touring entertainment is licensable in order to achieve the Licensing Objectives as set out in the Act when fairgrounds, the other traditional form of travelling entertainment, are not licensable.

12. The Circus Industry’s Experience of Licensing Under the Licensing Act 2003

The experience has been one of unremitting expense, unnecessary bureaucracy and a level of inflexibility which severely restricts the operation of a small industry. It cannot be acceptable that out of the leisure and entertainment sector circuses alone should be subject to such excessive expense. They are faced with an intolerable administrative cost which is out of proportion to what is achieved and through the inability to change circus sites at short notice they may be denied the opportunity to trade.

Why is there now a need to license circuses?
- Do circuses sell alcohol?—No.
- Do circuses attract an unruly element or create disturbances?—No. Circus is a family entertainment where people enter a tent, sit and watch a performance before leaving two hours later.
- Do circuses cause a nuisance in the community?—No. Circus performances finish before 10pm.
- Were there reported difficulties with circuses prior to licensing?—No.
— Has there been any increase in Health and Safety supervision in circuses?—No. Licensing has not added anything to Health and Safety requirements and circuses are subject to the same Local Authority inspections.
— Did the Government consult with the circus industry before it imposed licensing on circuses?—No.
— Does the Licensing Act 2003 make proper provisions for the licensing of a temporary structure which may be used within a different authority each week?—No.

13. THE UNFAIR TREATMENT OF LICENCES UNDER THE LICENSING ACT 2003

Circus as a travelling entertainment business is being made to comply with legislation which is designed for permanent premises. This cannot have been envisaged when the legislation was drafted and has produced a situation where one sector of the leisure and entertainment industry is being unfairly disadvantaged by an unnecessary administrative burden, costs which are out of line with those paid by other members of the industry who are required to license premises only once and the imposition of an inflexible system which can restrict the ability to trade while not producing any tangible benefit.

14. HOW COULD CIRCUSES BE TREATED FAIRLY?

Frequent meetings have been held with officials at DCMS and with ministers. The Department now accepts that there is a disproportionate burden on circuses under the Act, but has so far taken no significant steps to address this very real problem. The ACP has proposed to the Department four possible ways of ensuring that circuses are released from the present financial burden of licensing and are treated more fairly:

1. The DCMS accepts that its original interpretation, as set out in its Guidance issued under section 182 of the Licensing Act 2003, which states that “in the case of a circus, music and dancing are likely to be the main attractions themselves (and would be regulated entertainment) amidst a range of other activities which are not all regulated entertainment” is, on further consideration, unsound because any music played at a circus or element of dance within a display of circus skills is ancillary to what is not otherwise regulated entertainment. The position could then be rectified by the issue of amended Guidance without the need for further legislation.

2. The DCMS accepts that in the absence of any specific reference to circus in The Licensing Act, traditional circus does not fall into any of the categories of regulated entertainment and as the present system of licensing has not been seen to produce any benefits, circus should be exempt from licensing.

3. There is introduced a form of travelling license similar to the one which is available to cruise ships under the Licensing Act 2003. This could provide for a licence to be issued by the home authority where the circus has its permanent address and is produced either on demand or with a stated minimum amount of notice to the Local Authority where the circus is to trade.

4. The creation of a new class of Temporary Event Notices for events which do not involve the sale of alcohol and which finish no later than 10pm. These events would permit a maximum of 1,000 people and would cover a period of a maximum of six days. The required period of notice would be reduced from 10 working days to a more practical period of, say, five working days.

September 2008

Memorandum submitted by Zippos Circus

Zippos Circus is one of the largest of some 30+ circuses that tour the UK each year, and has a maximum seating capacity of 925 persons. Our touring season usually lasts from February until November, when we visit around 40 separate venues, generally for a week at each venue. Whilst we understand the need for regulation and compliance with legislation, we believe that the requirement for a separate licence for every circus venue we visit has placed an unreasonable burden on our circus and upon the industry as a whole.

We believe that the visit of a circus serves a useful and important function in bringing good quality, affordable live entertainment to local communities. It is often the first experience of live performance for young people, and as one of the most inclusive forms of entertainment, it deserves to be valued and to be supported by both local and national Government. Circus is a vital and integral part of our national heritage, the circus as we know it today was “invented” by an Englishman, Philip Astley, in 1768, since which time circuses performances were unlicensed until the Licensing Act 2003.

The introduction of the Licensing Act 2003 has caused a major impact on our business and our method of operation, by increasing our administrative and operating costs.—Unlike theatres who may benefit from the act, Zippos Circus has had to apply for Premises Licenses for over 30 venues at a cost of up to £1,000 per license, along with many hours of administrative time (sometimes attending Licensing hearings) thus reducing our income and profitability.
Our experience of making a Premises Licence applications is that the time-scale is far longer than anticipated: Because of the possibility of an objection, it may take three months for the grant of a licence, and it is only then that we can start to print posters, place advertising and sell tickets. This means that a four-month lead-time is realistic. But of course we must also be prepared for an application to be refused and allow enough time for an alternative venue to be sought and licensed, and this further extends the process.

More significantly, the Licensing Acts 2003 denies us the flexibility to chose and change venues that is all-important to the successful operation of our circus. Of course flooded parks in 2007 caused us to have to change venues at short notice last year, which in most cases meant operating on a TEN which reduced our seating capacity by half!

We have been forced to change a venue at short notice on nine occasions in 2007, and eleven occasions during 2008, and the ability to do so is vital to operating successfully. Such changes may be required for various reasons, with the increased rainfall and subsequent flooding of venues during the past two years a significant factor. Waterlogged grounds make it difficult for the set-up and operation of our circus and will deter the public from attending. There are times when we have had no option but to perform where ground conditions are unsuitable, because an alternative licensed venue has not been available, and have experienced a loss of income through poor attendance, and an increase in costs for repairs to the ground following our visit. Such ground-damage often makes a landowner or local authority unwilling to consider future circus visits, and can also have an adverse affect on the relationship between our circus and a park’s user group in the local community.

The necessity to change venues at short notice has forced us to give Temporary Event Notices on many occasions, with the resulting limitations on the number of days, number of performances, and audience capacity. These limitations have had a considerable impact: Although the capacity of up to 500 persons present that is permitted by a TEN is sometimes sufficient, the reality is that we expect to perform to a small audience on a weekday evening and rely on a weekend full-house to break-even. This subsequent loss of revenue means that TENs are not a viable option and are only used when the alternative is to close the circus.

During 2007 and 2008, the restrictions imposed by the Licensing Act 2003 have encouraged us to take our circus to Scotland for a significant part of each year. Here, we have found that the licensing policy is more consistent, with the result that our administration is easier and more straightforward. In most local authority areas the timescale for the grant of a Temporary Entertainment Licence is far shorter.

Many Licensing Authorities we have visited recently take the view that our particular circus does not contain any regulated entertainment have therefore declared Zippos exempt from licensing. For example:

- Circus music for example must be considered incidental. The acts can play without music, and circus music is not an advertised attraction on our posters.
- Is a clown act a play? And if it were, would 6 mins of clowning out of 2hrs total of circus make a circus licensable?
- Does a high wire walker walk or dance on the high wire?

The varying interpretations are based largely on section 10.35 of the Guidance Notes, the only section of the legislation to address the question of circus licensing:

10.35 In the case of circuses and fairgrounds, much will depend on the content of any entertainment presented. For example, at fairgrounds, a good deal of the musical entertainment may be incidental to the main attractions and rides at the fair which are not themselves regulated entertainment. However, in the case of a circus, music and dancing are likely to be main attractions themselves (and would be regulated entertainment) amidst a range of other activities which are not all regulated entertainment.

If exemption for bona fide circuses will now be considered as a realistic option, then we would like to suggest that this can be achieved by amending this section of the guidance notes, maybe:

In the case of circuses and fairgrounds, much will depend on the content of any entertainment presented. For example, at fairgrounds and circuses, a good deal of the musical entertainment may be incidental to the main attractions and rides at the fair or circus acts are not themselves regulated entertainment.

We feel that a change in the guidance notes would be the simplest “fix” to the of benefit to all parties. Licensing Officers would still then be able to rule on music events (raves) that might include circus acts but are clearly not circuses without having to define what a circus is.

Why License circuses? There has certainly been not benefit in Health and Safety terms, H & S inspections were rigorously carried out at circuses before Licensing, and this continues to be the case. Since circuses sell no alcohol and present family entertainment where Mum and Dad are present there is no risk to children. Our experience is that the burden on licensing circuses is considerable, and the benefit none.
Zippos Circus support the submission made by the Association of Circus Proprietors that it is reasonable to ask that a more appropriate system for circus licensing should be determined, and hope that a way forward can be found that will support this most worthwhile entertainment.

September 2008

Witnesses: Mr Malcolm Clay, Secretary, Association of Circus Proprietors of Great Britain and Mr Martin Burton, Founder and Director, Zippos Circus, gave evidence.

Chairman: For the second part of this session we are now going to look at the specific impact of the Licensing Act on touring circuses and I would like to welcome Malcolm Clay, the Secretary of the Association of Circus Proprietors of Great Britain and Martin Burton, the Founder and Director of Zippos Circus. Adrian Sanders is going to start.

Q146 Mr Sanders: Martin—or Zippo!—welcome. You say in your submission that the government changed its mind on whether or not circuses should be licensed. Has it been explained why?

Mr Burton: It has never been explained why at all. We received a letter a long time before the Licensing Act 2003 from the Home Office saying that circuses would not be drawn into licensing and we more or less therefore took it off our radar and at the very last moment it appears that circuses would be brought within the Act. We had no time by then to consult or be part of the process of consulting with the people who were drawing up the Act.

Q147 Mr Sanders: You have also disagreed with the government’s view on musical entertainment. Would you like to explain a bit more on that; that you differentiate musical entertainment within a circus to say how it is treated in a fairground?

Mr Burton: No, I think that music in a fairground is incidental. I can appreciate that; and I think by and large that music in a circus is incidental: that is, a juggler can still juggle without any music accompanying him and a trapeze artist can still make his or her tricks on the trapeze. The music, I believe, is incidental. The days when you might have a poster that said, “Zippos Circus featuring lions, tigers, elephants and Harry’s Big Band of 14”—we do not advertise the music on the programme. In fact you will find, as I was reminded only this morning, it is quite difficult to find out the names of the pieces of music that might accompany various acts because very often if it is a live band it is something that is more or less improvised. So I think that the music is quite incidental and, as we proved recently, in Birmingham, you can do it without music—it is not necessary.

Mr Clay: Could I explain that before the introduction of the Act circus was an unlicensed entertainment and the authority was two-fold: in the provinces there was a specific statutory exemption for circuses from entertainment licensing; in the London boroughs it was by decided case, where it was held that the music played at a circus was ancillary to the entertainment, so that circuses were never licensed when they performed within the London boroughs, on the basis that the public did not buy circus tickets to listen to the music—they watched a performance. I think the gent said at the time that the lady dancing on the back of a bareback horse may have been performing to music but it was the performance of the lady that the public were paying to see and the music was only incidental to that.

Q148 Mr Sanders: I find it difficult to understand a circus without music. You said you had a performance without music in Birmingham?

Mr Burton: I had some well publicised complications in Birmingham quite recently, in which they asked us to remove the music for certain acts and we did so without detriment.

Q149 Chairman: One of the purposes of licenses is that if an event is to be held at which a very large number of people are expected to attend then there are potential problems in terms of traffic congestion, in terms of the possibility of some kind of disorder or certainly crowd management and is it not therefore the case that with a circus which might attract a large number of people to each performance they should at least tell the local authority that this is going to happen and that the local authority should have the opportunity to maybe impose some conditions?

Mr Clay: Traditionally local authorities have always been aware that a circus was visiting and I think this is borne out by the fact that prior to licensing we had very strict health and safety inspections which were undertaken by the local authority environmental health department. Fairgrounds are inspected by the HSE but circuses are inspected by the local authorities, and we must be possibly the only business that was being inspected on a weekly basis by environmental health because in every town that we went to inevitably the inspector would turn up and he would look at what we call the travel distances within tents—that is the point from perhaps the furthest seat to perhaps the exit from the tent; look at fire precautions, extinguishers, etcetera, where people were perhaps likely to trip. So we have never traditionally had a problem with the local authority not being aware that we were in the town; and of course the whole of the circus industry is very publicity orientated, and if the locals did not know that we were there then you would not get the crowds that you were perhaps envisaging.

Q150 Chairman: You said that prior to the Act you were not licensed but that during the passage of the Act you were given reason to believe that you would be exempt. Can you set out to us exactly why you felt you were told that?

Mr Clay: The correspondence was with me as the Secretary of the trade body. When the Licensing Act kicked off it was with the Home Office and I received
the consultation document from the Home Office, the name of which is something like Time for a Change. I immediately wrote to the Home Office and said, “Are you suggesting that circuses are now going to be brought into licensing?” and the response was, “We do not know.” I then wrote to the Home Office with a full explanation of why previously we had not been licensed, whether it was in the London boroughs or in the provinces. I then got a second letter from the Home Office saying, “Thank you for the explanation”—I do not think the Home Office really understood what the background was—finishing. “It is not the government’s intention to licence circuses.” On that basis we were quite relaxed about it; we did not participate in the consultation process because there was no need. The draft Bill was then published and I looked at it and I could not see where the exemption was for circus. So I wrote, admittedly to the Home Office at first because I did not realise it had passed to DCMS, and got no response. I then wrote to DCMS and it took a long time—a matter of several months—to get a response from DCMS, which said, “No, we are now going to licence circuses; we forgot to tell you,” by which time it was too late. So this is what has led to this unfortunate situation where we have a licensing procedure and if the government thinks that circuses should be licensed then obviously the industry must go with it. But what the Act does is to try to shoehorn a travelling entertainment into a system which is specifically drafted for permanent premises, which is why we have this problem that the DCMS cannot really decide as to whether we are licensing the piece of grass where the circus tent is going to be put up, or are we licensing the interior of tent, the configuration of the seating, etcetera. The licensing may define—and I understand your concerns—but the Act itself just does not fit the industry that it is trying to bring into licensing.

Q151 Chairman: Although DCMS said that they had changed their minds and it was the government’s intention that circuses should be licensed, I know from the evidence that you have submitted that in actual fact in large parts of the country in practice they are not because the local licensing officer decides that it is not necessary to have a licence.

Mr Clay: I think licensing officers are in a very difficult position. If they look at the Licensing Act there is nothing which specifically licences circuses. The authority for licensing circuses is within the DCMS guidance, which was issued in both the first edition and the second edition, which contains statements about the music being an important part of the performance. I think in the first rush of licensing that licensing officers went strictly by the DCMS advice. I think having got other issues out of the way because of the licensing of pubs and clubs etcetera they have looked at this and some of them are prepared to take their own line and say, “We do not think circus is a licensable entertainment.” It is the inconsistency which is the problem because you can go to a town where the licensing officer says, “No, don’t worry. I don’t want an application,” and then perhaps the next week you go seven miles down the road into the next borough and you have to be licensed because the officer is not as flexible.

Q152 Chairman: Can you give us any indications of what proportion of licensing officers think you should be and what proportion do not?

Mr Clay: My experience is that the licensing officers in the rural areas are less inclined to want to license circuses and the officers in the cities and major towns are probably more likely to want to license circuses.

Mr Burton: My experience is that Zippo’s Circus will write a very detailed letter to the local licensing officer explaining what is in our circus and explaining why we think that is non-licensable and they will write back and agree or disagree with us. Increasingly as this year has gone on licensing officers have declared my circus and its content as non-licensable. Clearly there are activities which bring a form of entertainment within the Licensing Act and clearly not all circuses are the same, although I would suggest most touring ones are quite similar to mine. If we look in the recent past, then since July 80% of licensing officers that we have asked have declared my circus non-licensable. That, of course, would not be every single venue because we do hold some premises licences, but when the question has been asked 80% now would say ours is a non-licensable form of entertainment.

Q153 Chairman: So is the problem slowly disappearing?

Mr Burton: It is not slowly disappearing because, as Malcolm has already said, there is an inconsistency because you do not know when somebody is going to turn round and suddenly say, “Yes, this is licensable,” which is what happened to me in Birmingham in September. That is a graphic example of why the licensing officers and the circuses need some very clear guidance from the DCMS about what should and should not be licensed.

Q154 Chairman: Is there not a danger that DCMS issues some very clear guidance that may actually result in some of the licensing officers who presently say you are not licensable deciding that you are?

Mr Burton: Of course there is that danger, although I have met with the past four ministers at the DCMS and, without exception, every one of the four has agreed that the circuses’ licensing situation is currently unsatisfactory and needs sorting. I do not think that we have necessarily always agreed how it should be sorted, but the principle of is there a case to answer and should this be sorted out better is agreed by all parties, so I am quite confident that the willingness is there within the DCMS to tackle this problem.

Mr Clay: It is this grey area which is so difficult to contend with. If we have a juggler (and juggling is not a licensable activity) and the juggler has a girl assistant who wiggles about and passes him his hoops and clubs, is she dancing? People are smiling but it is a serious point. Where on the scale does the juggler’s assistant come into the area of dance? At the moment Zippo’s Circus has a Spanish boy on a
low wire who kicks his legs and dances. Is dancing on the tight wire, although it is a circus skill, included within the definition of dancing? The dancing is only an artistic way of expressing the routine. We have these grey areas. Licensing officers are saying, “We don’t really want to be bothered. We’ve never had problems with circuses.” The first time that we had a portable premises licence issued by the local authority where the circus is based. Does that hold any attraction for you?

Mr Clay: Yes, I think it holds considerable attraction. If the concern from the DCMS is health and safety and the internal layout of tents --- That is not a point which the industry accepts because the DCMS do not seem to understand that we are still inspected by the Environmental Health Department who we always look upon as having responsibility for the circus industry. If we were to have effectively a travelling licence where our home authority or a designated local authority looks at our tent and looks at our seating and the way that it is put together and says that is acceptable and it meets the HSE standards, we would be happy with that. The overall problem is this flexibility, having to change routes at the last minute. It is a coincidence that since the introduction of the Act we have had two of the worst summers in living memory when we would normally expect to be on nice dry parks and we save the hard standing as there is only a limited number of hard standing circus sites that we will visit in either spring or autumn, but instead the circuses have had parks booked which have just been so soft that either the council has said, “I’m sorry, but we’re not going to let you churn the park up,” or we know that if we drive onto that park then the cost of reinstating it afterwards is going to wipe out any potential profit. If we had had a bad summer four years ago we would have looked round very quickly for a suitable hard site, possibly a football ground car park which, if the fixtures are right, may work for us. We have two problems. The first is that 28 days notice for a premises licence is the minimum if everything goes smoothly. If there is an objection, however spurious it is, then it is all going to be too late for us, but very rarely will you know 28 days in advance that you are going to have four weeks of persistent rain. A lot of circus sites do dry out surprisingly quickly. The 28 days notice does not work for us. The Temporary Event Notices does not work because you still have your notice period which can be a problem. Circus tents accommodate between 500 and 1,100 people maximum. The circuses trade from Tuesday to Sunday. Everything is wrong for us with Temporary Event Notices.

Q155 Chairman: We will not press you on the names. In their submission to us the DCMS has suggested, slightly bizarrely, that you should be treated in the same way as an aircraft or a train in that you might have a portable premises licence issued by the local authority where the circus is based. Does that hold any attraction for you?

Mr Burton: I am now reluctant to give you the names of those officers.

Q156 Chairman: You would not be allowed a tent above 500, would you?

Mr Clay: No. That is the problem. The smaller end of the industry would scrape in on the Temporary Event Notices. The larger ones cannot, which is unfortunate because the circus, being an activity which does not sell alcohol and an activity which finishes by 9.30 pm or 10 pm at the latest, is brought into a system which is really designed for dancing, the selling of alcohol, et cetera, but there is no other avenue available to us. We cannot cope with either the notice for a premises licence and very rarely can the Temporary Event Notices system accommodate what we need. It goes back to the point that had there been consultation and an understanding of how the industry works we would not have been shoehorned into this situation. We have been faced with a different premises licence every week for a 40-week season, whereas your local pub or club has one licence application to make. That would never have happened if there had been consultation.

Q157 Mr Evans: Malcolm, we are sometimes accused of being a bit of a circus here, none more so than when you brought the circus to Westminster a few months ago! We are extremely grateful to you for doing that because it gave us a great insight into what you do. Few people have any idea as to the costs of these licences that would fall on—if there is such a thing—an average circus. Can you give us an idea of what costs circuses have to meet?

Mr Clay: When we started licensing we calculated that the licences were costing £1,000 a time. The public notices column of your local paper is the most expensive column to advertise in. If we could have advertised in the entertainments column it would have been cheaper. We have the problem of trying to affix the notices to trees in parks and railings where if you put them out of reach of the locals who are tempted to pull them down then people cannot read them. You are probably operating your business 200 miles away at that time so you do not know what is happening with your notices. The cost has been a problem and it is a problem that has diminished slightly and the industry has had to cope with it. The real problem with all of this is the flexibility. You know what your licence is going to cost and the industry, by the nature of the people who run it, is quite resilient, but you cannot cope with arriving in a town and not being able to trade for a week because your expenses remain exactly the same.

Q157 Mr Burton: Mr Evans: You seem to have a running theme on advertisements in local newspapers. Could you just say how effective you think advertising in the local newspapers the licence application is? Do you think it is the most cost-effective way of doing it?

Mr Burton: Are you asking me whether people read the public notice columns?
Ev 52  Culture, Media and Sport Committee: Evidence

28 October 2008  Mr Malcolm Clay and Mr Martin Burton

Q159 Mr Evans: Yes.
Mr Burton: I think they read those when their own son or daughter is getting married, otherwise they do not bother. No, it is not effective. The blue notices bring it to people’s attention, but there is a problem with keeping the blue notices up and that is that I am afraid kids like to take them down.

Q160 Mr Evans: The Act has been going for some time now. I presume that most circuses have applied for premises licences in virtually all the sites that you would ever appear.
Mr Clay: It does not quite work like that because a lot of councils will allocate their site to one circus one year but say next year we want a different circus or the year after we want a different circus. The licence is specific to that operator and not to the site. You may have a succession of annual premises applications for the same site. Circuses are forever looking at different sites. You lose sites due to redevelopment or local events that are taking place in the park. Certainly we are over the first wave of applications, but this is going to be a continuing process because of the change of sites. We are not altogether sure what we will do when we change our tents and seating because an application -- To the layman perhaps all circus tents are alike but they are not quite the same, nor is the seating quite the same. So when we go back two years later and it is a new tent (because tents have a limited life), are we then required to make a new application? This is why the system just does not fit the industry.

Q161 Mr Evans: You have just mentioned the costs which I would have said are substantial because that money has got to come from somewhere and it is a cost that you did not have to meet before this regime came in. In your estimation the new licensing regime and the costs involved with it putting circuses out of business? Is it threatening the livelihoods of certain circuses in this country?
Mr Burton: Can I give you a very clear example of a hardship my circus suffered last year? We were due to open in Sheffield and my circus was in Twickenham. We went to Sheffield the week before and made the necessary inspections with the council officers and the parks officers and everything was fine. On Monday morning the first vehicle pulled onto the park in Sheffield and within 10 minutes I had a phone call from the Mayor’s office saying our event was cancelled. You will remember that Sheffield had terrible floods last year and this was right in the middle of all of that. Pre licensing what I would have done was I would have phoned up Meadowhall shopping centre and moved my circus from the council park to Meadowhall. It would have required me to alter my advertising at the very last minute, but that is my job and that is my expertise. Do not think for one moment my expertise is putting up tents; I have other people who do that. My expertise is in promoting an event at very, very short notice, but I can do that and I have done it all my life. However, because of the Licensing Act 2003 we had to turn round. I literally had lorries coming off the motorway onto the slip road and I told them to go back onto the motorway and back to London. The only place we had a premises licence that we could use was for Barnes in London. So we went all the way back to Barnes and opened in Barnes. I have told you how I can re-advertise, but it is one thing to re-advertise the change in location from one part of Sheffield to another, it is another thing to advertise a change in location from Sheffield to Barnes. That caused us real hardship and we lost serious money that week, plus the next venue was Perth in Scotland and the idea of Sheffield was it is half way to Perth. I then drove from Barnes to Perth without a break, which was another extremely expensive exercise. That was as a direct result of the Licensing Act causing us real hardship. I differ very slightly from Malcolm in that I do understand what the DCMS has said to you about the Home Authority Principle. It probably works more for ships. A ship can berth most of the time at Southampton, although it has a licence to appear in ports around the country. The reason the circuses are licensable is because of guidance note 10.35 and if you are looking at the old guidance it is 7.36. I would just like to read you a little bit. It says, “In the case of circuses and fairgrounds, much will depend on the content of any entertainment presented.” For example, at fairgrounds, a good deal of the musical entertainment may be incidental. However, in the case of a circus, music and dancing are likely to be main attractions themselves. I have said to you that we have consistently proven that music and dance are not the main attractions but incidental. I suggest to the Committee that although the Home Authority Principle would work for us, the simplest, cheapest, easiest way for this Government to help the circuses would be to change the guidance notes to say, “In the case of circuses and fairgrounds, much will depend on the content. For example, at fairgrounds and circuses, a good deal of the musical entertainment may be incidental.” It is a simple piece of rewording. That rewording gives you other safeguards as well. There is clearly a point at which some circuses may become so production heavy that they do become a theatrical production. We all know Barnum, for example. The individual licensing officer would then be able to make a decision as to whether or not a circus had actually gone over the edge of being a traditional touring circus like mine and become a theatrical production or whether it was still that.

Q162 Mr Evans: That is the difference between your circus and the Cirque du Soleil where the music is very important there.
Mr Burton: I would rather use the example of the circus musical Barnum, which is a theatrical production, but clearly there is a sliding scale and somebody needs to make a judgement. The DCMS will be in very tricky waters if it ever tried to define a circus. There are dragons. I warn you, do not go there! To leave it to somebody’s individual discretion and where people can sit down and argue it out clearly works in practice because I am doing it now, and you can change it just by changing the guidance notes and it is very cheap.
Mr Clay: I think you were concerned about the actual cost of the licence application. It does create a strain and I think circuses have been resilient and they cut a bit here and there. You are a businessman. There is a limit as to just how much you can keep cutting. Against that we have got to balance the fact that circuses are one of the few commercial live entertainments that spread right across the country. The circus industry is touring from the very southwest right up to the north of Scotland, which I know is a different regulation, but they are going to a lot of small towns where there is no permanent commercial live entertainment source. For a lot of children their first experiences of live entertainment are circuses and pantomime and it is the circus that goes to them; the children you have to take to the pantomime. If you look at the smallest members of my Association, say Lawson's circus which is based in Kent and which plays two places every week and just sticks to the large villages and the small towns and he goes back to those same places frequently because he has his reputation, it is a part of the culture, it is something which annually the people look forward to there, but he has problems, he has lost places this year because of the rain. He loses sites because they are now being used for something else. So the cost of the licence is a problem, but it is the loss of trading which is a greater problem in that if you have a circus which may well have expenses of £20,000 a week or more and you are stuck in a car park for a week because you cannot trade, that is an awful lot of expense to pull back over the rest of the season. I listened to what Martin said about this Home Office licence, which I think may well be the compromise, but I am certainly attracted to a very clear indication from DCMS as to whether a circus is licensable or not. On the wording which we should be looking at from the DCMS, a circus would not normally be a licensable activity and then if it does go over the edge because it is a large production show, which we tend not to see touring in tents, then fine, it brings it into the regime. It is this very nebulous advice from the DCMS at present while the music may be incidental or it may not be incidental. Part of the advice that we had originally was that a lion trainer (not that we have lion trainers) or a high wire walker would not make the circus licensable but that clowns would make the circus licensable because a clown act basically is a mini drama. It is very difficult to run a business based on those sort of interpretations.

Q163 Chairman: Finally, you have suggested that it might be different in Scotland at the moment and that the regime is easier in Scotland. Does that represent a potential way forward?

Mr Clay: Scotland has had a form of licensing under the Scotland Local Government Act 1983 where there is a licensing regime but it is focussed very firmly on health and safety and producing layout plans and producing engineers' reports on the stability of seating. It does not license the entertainment, it licenses the equipment that you are taking onto site. There is a decided case where one of the Scottish local authorities tried to restrict the programme content and it went to the Court of Sessions in Edinburgh and the circus was successful and the judge held that Scottish licensing is not a form of restriction or censorship of the circus performance, it is based on engineering requirements.

Chairman: I think that is it. Thank you very much.

Supplementary memorandum submitted by the Association of Circus Proprietors of Great Britain

I do believe that the difficulties with the Licensing Act experienced by the circus industry arise from the Government’s failure to consult with that industry. It has meant that circuses have been brought into a system which is designed for permanent premises. It may be helpful if I was to set out the sequence of events. In the summer of 2000, I received from the Home Office the consultation document “Time for Reform: Proposals for the Modernisation of our Licensing Laws”. As a result I wrote to Phillip Drummond at the Home Office on 22 August 2000, advising him that circuses were then exempt from licensing and asked him to confirm “that the new proposals do not affect the existing statute or case law and that it is not proposed to bring circuses, which are moving on a weekly basis, within the licensing arrangements”. Mr Drummond responded on 1 September, informing me that the Ministers had not considered the issue of circuses and similar forms of entertainment and that they would consider whether or not circus should be brought under the new licensing system. In view of that response, I wrote again on 24 October 2000 to Phillip Drummond commenting that I was aware that there was some confusion within the Home Office on the licensing of circuses and, particularly, there appeared to be an assumption that circuses were already licensed. In that letter I gave the detailed explanation by reference to statute and case law as to why circuses were then exempt. I also pointed out that any proposals to bring circuses into a licensing scheme were going to create enormous practical difficulties, requiring circuses to apply for a licence in every town which they visited. The Bill had not, at that stage, been published. The response to our letter came from Keith Batten at the Home Office who stated “I am grateful to you for setting out so clearly the situation for circuses at present. I have spoken to colleagues within the Home Office and at the Local Government Association and at present the Home Office does not plan to include circuses in the scope of the White Paper or any other future legislation”. In view of that assurance the circus industry believed that it was to be excluded from the new licensing regime and nothing further happened until the Bill was published late in 2002 when I then became concerned to see that there was no specific exemption for licensing circuses. I then wrote to Keith Batten on 30 January 2003 referring to his letter and the assurance which it contained. I did not receive any response from Keith Batten and wrote to him again on 26 March 2003 expressing my concern that the legislation appeared to be moving
forward and there was a danger that circuses were going to be brought into licensing by default. Still not having received a response I wrote on 8 April 2003 to Kim Howells the Minister at the DCMS enclosing a copy of a letter from the Home Office of 27 November 2002 and expressing my concern that there was no specific exemption for circuses in the Bill. Keith Batten eventually wrote to me on 11 April 2003 informing me that the responsibility for the licensing proposals had been passed to the DCMS and confirming that my letters of 30 January and 26 March had been passed to that Department. On 14 April the DCMS wrote to me apologising for the delay in the reply but stating that “the current exemption for circuses or pleasure fairs would be removed under the provisions of the Bill”. There was no explanation as to why the Government had changed its mind and no apology for the industry not having been informed. There was then a suggestion that Andrew Cunningham, the Senior Government Advisor on Licensing, who was chairing meetings of the Guidance Note Group, thought that a meeting to discuss circuses would be useful. However, that meeting was never held. The industry was alarmed and there were letters sent to both Tessa Jowell and the civil servants at the DCMS who were handling the Bill. There was a clear inference from the DCMS that the Government could not be seen to be making amendments to the Bill for one particular group but would seek to assist circus when the DCMS came to prepare the Guidance Notes. The Bill subsequently became law but the publication of the Draft Guidance Notes was still awaited. I then received a letter dated 25 August 2003 from the office of Richard Caborne enclosing the Draft Guidance Notes to Local Authorities and inviting me to make comments not later than 5 September 2003. In the ordinary course of events that would have been a ridiculously short time for any trade association to consult with its members before making representations. However, the letter was not posted until 3 September 2003 and although it was received on 4 September 2003 it was not seen by me until the end of the working day but a response was needed by the following day. All of this made a complete mockery of any useful representations being made. It cannot be acceptable that the Government made fundamental changes to the way in which an industry operates without giving adequate notice to the industry and holding consultations. Requests to the DCMS for an explanation as to why the Government changed its mind without informing the industry and why it failed to consult with the industry, even though circuses specifically referred to in the Guidance Notes have failed to produce a response. I am sure that you will agree that it has been a most unsatisfactory exercise.

Since the publication of the Guidance Notes this Association has had meetings with four DCMS Ministers, all of whom appear to have accepted that the situation was unfair and agreed that something should be done to help circuses.

Your committee meeting focused on the two major issues facing circuses: the unfair cost of having to apply for a Premises Licence every week the circus operates and the inflexibility of not being able to change circus sites at short notice, resulting in some cases of a week’s trading being lost.

On the issue of cost I accept that the major part of the cost has now been absorbed by the industry, however much financial hardship this has caused and there is an ongoing situation where circuses are either using an established site but one which that particular circus has not used before or is using a completely new site, all of which will involve new Premises Licence applications. I would not like to think that any relatively minor easing of the regulations such as the display of notices would be considered by the DCMS to be sufficient to help circuses.

The issue of flexibility is, of course, fundamental to the problems which the circus industry faces. Although this Association has not had any direct indication from the DCMS that a travelling licence, such as those available to cruise ships or trains, may be preferred. Cruise ships and trains, sell alcohol which is an activity which does not take place at a circus but cruise ships do provide regulated entertainment and, in principle, the industry feels that a travelling licence could be workable. This would probably be on the basis that the individual circus is licensed with its Home Authority and can then trade under that licence across England and Wales. However, there is one important issue which must be borne in mind and that is the question of notice. If the Visiting Authority is to receive notice of the proposed use of a travelling licence then that notice must, of necessity, be very short otherwise the problems of inflexibility will remain. A notice period of 28 days as required for a Premises Licence or even 10 days as required for a TENs would not solve the problem of circuses having to move sites at very short notice. I trust that this would be borne in mind if a travelling licence is to be considered.

The Association’s own preference would probably be for amendment to the Guidance Notes with a statement to the effect that a performance of traditional circus skills or entertainment where the playing of music and any element of dance was ancillary to that entertainment would not normally be licensable. We have made you aware that many Licensing Officers already take the view that circus is not a licensable activity but the situation is highly unsatisfactory when towns only a few miles apart may have different policies and any exemption from the licensing is based only on the interpretation of an individual Licensing Officer. I hope that we may be able to look back on the meeting as being the point at which the acceptance by the DCMS, that circuses needed help, turns into something more positive.

November 2008
Memorandum submitted by the Association of Convenience Stores

ACS (the Association of Convenience Stores) represents over 33,000 convenience stores (Annex 1). Many of our members sell alcohol and the introduction of the licensing act has had an impact, both financially and operationally.

Role of Alcohol in Convenience Stores

Alcohol is an important category for convenience stores, making up on average 12% of sales figures. However, this is a small percentage when compared to on-trade premises, whose primary business is alcohol retailing. Below are the 2006 figures on the sales contribution of alcohol in different types of convenience outlet.

<table>
<thead>
<tr>
<th>Shop type</th>
<th>Sales Contribution of Alcohol (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Symbol group</td>
<td>16.3</td>
</tr>
<tr>
<td>Convenience multiple</td>
<td>12.6</td>
</tr>
<tr>
<td>Company managed forecourts</td>
<td>5.4</td>
</tr>
<tr>
<td>Co-ops</td>
<td>14.6</td>
</tr>
<tr>
<td>Sample average</td>
<td>12</td>
</tr>
</tbody>
</table>

Figure 1: source IGD Convenience Retailing 2007

Licensing Fees

The introduction of the Licensing Act 2003 had a financial impact on our members, many of whom ended up paying significantly more in licensing fees as a result. We do not believe that the current fees are allocated equitably and urge the Committee to take into account the detrimental impact the new fee structure has had on convenience retailers.

The cost of a premises licence for most retailers operating a convenience store falls into band A, B or C. As shown in Annex B, a retailer whose fee falls into band B has seen their statutory costs rise from £30 for three years under the 1964 Act to as much as £425 for the same period under the 2003 Act. This is an increase of up to 14 times for the premises licence only (personal licences incur additional costs). This increase has had a dramatic impact on business costs and ACS estimates suggest it may have resulted in costs to convenience stores in England and Wales of over £11.6 million. In most cases, there is no cost saving in terms of other licensable activities for the off licence sector.

As well as the statutory licence fee there are also a number of additional costs associated with obtaining an alcohol licence. Some examples include:

- Advertising costs £120
- Plan of the premises £125 (estimate based on quotes received)
- Personal licence holder costs
  - Including
    - Statutory fee £37
    - Qualification £150
    - Criminal Records Bureau £30
    - Lawyer costs £200 (estimate based on quotes received)

We would strongly urge the Committee to look at some of their costs, such as the requirement to advertise an application for a licence in a local paper. The advertisement is rarely seen and serves little purpose and we would recommend that the requirement was removed during future legislative simplification works.

In Annex B we estimate that an independent retailer should expect to spend between £1,089 and £1,289 on obtaining an alcohol licence. A large part of this fee is the same whether the retailer is large or small, located in an urban centre or rural area, whether the retailer sells small amounts of alcohol or it is the primary part of their business. ACS believes that these costs are disproportionate and contrary to the objectives laid down in the Licensing Act (2003) proposals and contrary to the principles of good regulation.

Associated Costs

There has also been a further burden that is less easy to quantify in monetary terms. The application process places a significant time burden on the applicant. Administrative requirements include:

- Drawing or commissioning a scale drawing of the premises.
- Reading and understanding a bundle of legalistic and unclear application materials.
- Identifying and serving copies of applications to eight different authorities.
- Arranging for a declaration of criminal convictions.
Identifying and undergoing a course and examination.

Sourcing photographs and arranging for them to be suitably endorsed.

This burden was particularly intense during the transition and dual licensing period. Independent retailers are disproportionately affected by the burden on time since they do not have access to specialist administrative and legal resources. These accumulating bureaucratic costs demonstrate that the structure of fees associated with the Licensing Act 2003 have a disproportionate and debilitating impact on the offlicence sector. The current structure fails to meet the aim of ensuring that fees are allocated equitably.

ACS urges the Committee to look into the current licensing fee. In particular, the fee structure is unfair on convenience retailers for the following reasons:

1. **Fee Reduction in other Licensable Activities**

   The significant reduction in the cost of obtaining a public entertainment licence for pubs and night clubs has been balanced with significant increase in fees paid by other licence holders. Off licences and convenience stores, in the overwhelming majority of cases, have not required any other form of licensable activity under the legislation. This has not been reflected in the allocation of fees.

2. **Cost of Administration**

   Off licence applications do not require the same level of administrative and enforcement resource, to manage issues such as:
   - capacity limits;
   - crowd control;
   - noise pollution;
   - cumulative impact;
   - access for children; and
   - out of hours enforcement visits.

   Off licences require less enforcement resource than other types of premises. ACS urges the Committee to take into account the lesser cost of administering licences to off licences. The existing fee structure requires off licences to subsidise the administration of licences in other sectors which is not fair.

3. **Non Specialist Alcohol Retailers**

   In the original consultation the Secretary of State stated her desire to ensure that the fee levels are fair and equitable. However the use of rateable value as a mechanic takes no account of the reality that in a convenience store alcohol accounts for an average of only 11.6% of turnover (see figure 1) compared to specialist on-licence premises where the vast majority of income is derived from alcohol.

**MINOR VARIATION PROCESS**

It is welcomed that the Government is seeking to introduce a Legislative Reform Order (LRO) to introduce a simplified minor variation process. The process will save retailers time and money. However, we are concerned that licensing hours will be exempted from the process. In the off licence sector it is highly likely that premises would want to make small changes to their opening hours. It is a significant frustration that the politicisation of this issue has overridden common sense. There is no logical reason why the issue of opening hours could not be a matter for Local Authority discretion as is the case with other small changes.

We understand that a premise seeking to extend their hours significantly especially late at night is a matter of considerable interest to responsible authorities and local residents and should be a major variation. However this is not the same as a premise seeking to extend their licensing hours by one hour, for example on a Sunday from 10am to 9am so as to be consistent with their opening hours for the rest of the week. Exempting small changes in licensing hours from the minor variation process means that for the off licence sector the deregulatory benefits of the process as a whole are significantly diminished.

**FORMS**

The introduction of the Licensing Act 2003 has placed a bureaucratic burden on retailers. In particular the forms are very complex and the duty for the applicant to copy them to the relevant bodies can be confusing. The Act needs to be simplified to allow electronic forms.
CONCLUSION

ACS urges the Committee to reconsider current fee levels and structure before the interests of thousands of UK retail businesses, small, medium and large are severely compromised.

ACS welcomes the introduction of a light touch minor variation process and hopes that the licensing act will be further simplified in the future, particular in relation to forms. However, we would urge that Government looks again at exempting licensing hours from the minor variation process.

APPENDIX A

THE ASSOCIATION OF CONVENIENCE STORES

ACS is the trade body representing the interests of over 33,000 convenience stores operating in city centres as well as rural and suburban areas. Members include familiar names such as Martin McColl, Spar and Thresher, as well as independent stores operating under their own fascia. Our members operate small grocers, off-licence or petrol forecourt shops with between 500 and 3,000 square feet of selling space.

APPENDIX B

Case study calculations ACS carried out for the original consultation on proposed licensing fees.

EXAMPLE 1

Independent retailer operating a small town/village shop this retailer does not employ an advocate for licensing purposes. The retailer wants to make an application to vary the licence to match existing opening hours 7am to 11pm, seven days a week.

The store is Band B operating on a rateable value of:

<table>
<thead>
<tr>
<th>Existing licence cost for three year period</th>
<th>Costs to incur during the first three years from 7 February 2005</th>
</tr>
</thead>
<tbody>
<tr>
<td>Licence fee</td>
<td>£30 Premises licence</td>
</tr>
<tr>
<td></td>
<td>Annual renewal fee 2006</td>
</tr>
<tr>
<td></td>
<td>Annual renewal fee 2007</td>
</tr>
<tr>
<td></td>
<td>Two personal licences</td>
</tr>
<tr>
<td>Cost of newspaper advertising</td>
<td>Drawing of plan of the premises</td>
</tr>
<tr>
<td>Total cost</td>
<td>Cost of newspaper advertising</td>
</tr>
<tr>
<td></td>
<td>Total cost</td>
</tr>
<tr>
<td></td>
<td>Additional costs if the retailer decides to employ an advocate</td>
</tr>
<tr>
<td></td>
<td>Total Cost</td>
</tr>
</tbody>
</table>

EXAMPLE 2 (next page)

A small chain of convenience stores operating 12 stores based in a variety of urban, suburban and neighbourhood areas.

The first table sets out their estimated costs per site for the three years from 7 February 2004. The second table summarises the differences.
**NEW LICENSING COSTS: IMPACT COSTING FOR CHAIN OF 12 CONVENIENCE STORES**

**Example 2**

<table>
<thead>
<tr>
<th>R/V</th>
<th>Year 1 licence</th>
<th>Personal licence holders</th>
<th>Year 1 total</th>
<th>Year 2</th>
<th>Year 3</th>
<th>3 year cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>12,000</td>
<td>£150.00</td>
<td>£74.00</td>
<td>£224.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>18,500</td>
<td>£150.00</td>
<td>£74.00</td>
<td>£224.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>17,000</td>
<td>£150.00</td>
<td>£74.00</td>
<td>£224.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>13</td>
<td>19,900</td>
<td>£150.00</td>
<td>£74.00</td>
<td>£224.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>28,250</td>
<td>£150.00</td>
<td>£74.00</td>
<td>£224.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>23</td>
<td>10,750</td>
<td>£150.00</td>
<td>£74.00</td>
<td>£224.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>25</td>
<td>13,500</td>
<td>£150.00</td>
<td>£74.00</td>
<td>£224.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>26</td>
<td>8,400</td>
<td>£150.00</td>
<td>£74.00</td>
<td>£224.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>37</td>
<td>24,500</td>
<td>£150.00</td>
<td>£74.00</td>
<td>£224.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>40</td>
<td>5,300</td>
<td>£150.00</td>
<td>£74.00</td>
<td>£224.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>72</td>
<td>250,00</td>
<td>£150.00</td>
<td>£74.00</td>
<td>£224.00</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Cost Comparison over 3 years**

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Current System</td>
<td>£1,080</td>
</tr>
<tr>
<td>New System</td>
<td>£6,576</td>
</tr>
<tr>
<td>Cost Increase</td>
<td>£5,496</td>
</tr>
<tr>
<td>Percentage increase</td>
<td>508.89%</td>
</tr>
</tbody>
</table>

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Cost Comparison</td>
<td></td>
</tr>
<tr>
<td>Current System</td>
<td>£1,080</td>
</tr>
<tr>
<td>New System</td>
<td>£6,576</td>
</tr>
<tr>
<td>Cost Increase</td>
<td>£5,496</td>
</tr>
<tr>
<td>Percentage increase</td>
<td>508.89%</td>
</tr>
</tbody>
</table>
Example 3

Example 3 is a national chain operating 30 newsagents with alcohol licences, based in suburban and urban areas.

The 30 stores are band A

In preparation for transfer 30 of the companies stores have had the Assistant Manager transferred onto the licence. They have incurred 30 BIIAB charges and 30 Court / Solicitors Fees, which works out at:

\[
\begin{align*}
30 \times £152.75 & = £4,582.50 \quad \text{(BIIAB Costs)} \\
30 \times £165.13 & = £4,953.90 \quad \text{(Transfer Costs)} \\
£9,536.40
\end{align*}
\]

Current licence fees: £1,530
Estimated licence fees under new system: £9,000
% increase: 588%

October 2008

---

Memorandum submitted by the Wine and Spirit Trade Association (WSTA)

1. The Wine & Spirit Trade Association (WSTA) is the UK organisation which represents the whole of the wine and spirit supply chain including producers, importers, wholesalers, bottlers, warehouse keepers, freight forwarders, brand owners, licensed retailers and consultants. The WSTA was has over 330 members and includes amongst its member companies, most of the supermarket and specialist off licence chains operating in typical towns and city centres. The nature of our organisation means that we are best placed to comment on aspects of Committee’s inquiry related to the administration of the licensing regime for off-trade retailers.

2. The WSTA seeks to function as a driver for best practise in off-trade alcohol sales and we provide the secretariat for the Retail of Alcohol Standards Group (RASG), a forum for competing off-trade retailers to share training methods and good practise. RASG has been successful in rolling out the Challenge 21 signage which has now been widely adopted by on and off-trade premises across the UK. RASG has also been active in partnership working with local authorities, pioneering the innovative Community Alcohol Partnership (CAP) model with Cambridgeshire County Council (see accompanying booklet).

3. The WSTA broadly welcomes the Licensing Act and the greater flexibility it has allowed which has been mainly positive both for business and for the many customers who value the opportunity to purchase alcohol as part of a weekly shop at times which suit them. We also welcome the additional and more flexible powers given to enforcement agencies to deal with any problems arising around licensed activity.

4. However, our concern is that the greater delegation of powers down to a local level has led to inconsistencies in the way that Local Authorities have interpreted and implemented the Act. In some cases authorities have set or tried to set licensing conditions which are not evidence based and which can be counter productive or possibly even illegal. At the annex below, we list some examples as reported by our member companies.

5. The central concern here is the unnecessarily burdensome nature of the approach of some local authorities and the wide variation between the approaches taken by different areas. While we welcome the enforcement of existing laws on alcohol, some of the approaches taken by Local Authorities seem designed to increase the level of bureaucracy for an off-licensed premise rather than address any specific poor conduct around the sale of alcohol.

6. We believe that the Government needs to do much more to guide Local Authority licensing officers towards solutions which are known to work. The Government needs to promote best practice and evidence based solutions through better regulation and partnership working. We endorse the recent NAO analysis of the implementation of the Licensing Act 2003. It commented: “Where the Licensing Act appeared to be being used most rigorously and effectively the members of the Crime and Disorder Reduction Partnership, and primarily the local authority and the police, had built up a good relationship with the licensed trade and worked to help them understand the business benefits of the Act”. (Report: HO Reducing the Risk of Crime 21 February 2008, National Audit Office).

7. We believe that local authorities can achieve better results by working in partnership with local retailers, as per the CAP model. This approach is far less resource intensive for local authorities and retailers can provide valuable intelligence to aid enforcement. Furthermore, by enforcing the offences of proxy purchasing alcohol on behalf of children and attempted underage purchase, this approach creates a much needed deterrent to illegal behaviour around alcohol on the demand side. The WSTA would be pleased to work with any Local Authority that wishes to institute partnership working.

8. Finally, the recent introduction of local better regulation offices should we believe become the key means for ensuring that consistent better regulation is implemented.
EXAMPLES OF INCONSISTENT OR POOR REGULATION

DIFFERENT ENFORCEMENT PRACTICES MAKE IT HARD TO PROVIDE UNIFORM TRAINING PROGRAMMES

— Some local authorities use forged ID during test purchase operations and use volunteers over the recommended guidance age. This is designed to catch out retailers rather than to validate high quality training programmes.

— Constant test purchasing—some Local Authorities will test a store constantly until they find an illegal sale when they will then review the licence. This approach fails to take into account any risk based assessment and does not tackle the demand side. It also risks turning a decent, hard working check out assistant who has made a mistake into a sacked worker who has a criminal record.

PROCESSING OF APPLICATIONS

— Some local authorities require conditions to be placed on licences, sometimes without prior discussion or consultation, to meet perceived local problems or concerns, as opposed to issues which directly relate to the premises which are the subject of the application.

— Some authorities are simply not aware of what documentation is required. Stores are therefore often unnecessarily asked to produce and copy documents which aren’t needed for consideration of applications for variations of licences.

— There is considerable inconsistency in the processing of new personal license applications. Delivery ranges from a couple of days to months for the council to respond.

— Minor variations have been the subject of a recent consultative proposal from DCMS. At the moment, there is considerable inconsistency between local authorities as to what they consider to be minor and how they handle the process.

— When hearings are required, some authorities provide notice for applicants to attend whilst others refuse to acknowledge that the applicant has any rights to be at their own hearing. Submissions are sometimes required well in advance of a hearing and sometimes not.

PERVERSE CONDITIONS

— We have seen Local Authorities require all beer or cider over 5.5% to be removed from shelves. This restriction has no evidence base and includes all the fine quality varietal ciders and beers on offer to the discerning drinker.

— Some local authorities require impossible training demands such as requiring all the staff in a supermarket to complete a BII qualification examination.

— Some local authorities are asking stores to mark their bottles and cans. Again there is no indication that they have considered the cost to companies and examined how this will help prevent under age drinking.

— Stores are asked to enter into voluntary agreements with each other and with the police/local authority not to sell alcohol to those under 21. We have strong legal advice that companies cannot enter into this kind of agreement because of competition law.

— Some local authorities have sought to impose conditions on retailers to restrict price-promotion activity which is also likely to put those retailers in breach of competition law if they agree to the condition.

October 2008


Witnesses: Mr James Lowman, Chief Executive, Association of Convenience Stores, and Mr Jeremy Beadles, Chief Executive, The Wine and Spirit Trade Association, gave evidence.

Chairman: For the final part of this session can I welcome James Lowman, the Chief Executive of the Association of Convenience Stores, and Jeremy Beadles, the Chief Executive of the Wine and Spirit Trade Association. I know that Nigel Evans wishes to make a short statement and then he is going to commence the questioning.

Q164 Mr Evans: I am declaring an interest in as much as I own a retail convenience store in Swansea which has an off-licence department in it. James, what have been the benefits of the Licensing Act for the trade and for its customers?

Mr Lowman: The Act has created more flexibility around local decision-making by local authorities, with case-by-case conditions placed on licences and so on. It has led to opportunities for longer hours, albeit they are pretty rarely taken up in our sector. Most convenience stores open long hours anyway, but very few have taken the opportunity of the Licensing Act 2003 to extend those hours. Customers could then benefit through that greater flexibility and greater opportunities to access the whole of a store rather than, as under the old Act, certain parts of the store being locked up at certain times. The costs are significant for convenience stores. Most of the benefits in terms of reduced costs under the Act have accrued to pubs and clubs and those who have public entertainment licences because they have seen those licensing systems brought into one and that has made a saving for our members. You would not expect any convenience stores to have public entertainment licences and so we have seen a very significant increase in costs from around £30 for three years for the old licence up to a cost of well over £100 a year under the current system, so it has been a massive uplift in cost.

Q165 Mr Evans: How do you think the enforcement agencies should proceed if they suspect that a retail outlet may be breaching the conditions of its licence?

Mr Lowman: They should—and the Act provides for it—speak to that premises. They should make sure they have evidence of how the licence is being breached. If the type of breach was, for example, selling to under-age people—and the likely type of breach varies between pubs, clubs and off-licences—then evidence should be gathered. I think the best approach is to work with the retailer to try and improve standards, to try and address any issues around training and so on. If the retailer is not improving, there are opportunities to place conditions on that licence which are appropriate to that specific premises, and then ultimately the local authority can seek revocation of the licence. If someone is irresponsible and not improving and showing no signs of improving, we would entirely support the revocation of a licence in those circumstances.

Q166 Mr Evans: What about sending in people who are under age?

Mr Lowman: To buy? As test purchasing?

Q167 Mr Evans: Yes.

Mr Lowman: That tends to happen a lot. Local authorities and the police can do that activity either on the basis of trying to gather evidence for a licence review by targeting specific premises or, probably more likely, as part of an authority-wide campaign or a targeted campaign on a certain part of that local authority area to try and gather evidence about under-age purchases that are taking place. It may be based on a licence review or it might be based on other evidence or it might just be pretty much random.

Q168 Mr Evans: The fact is that there is always this general impression that if people who are under age are drunk or are drinking they have not got their alcohol from a pub, they have got it from an off-licence, or it is somebody over-age going in and getting it for them or youngsters going in themselves and the retailer just selling it to them willy-nilly because they just do not care, they just want to make a sale. What would you say to that accusation?

Mr Lowman: I do not think that is a widely held perception. All the evidence from test purchasing campaigns shows that the off-trade generally does better than the on-trade in test purchasing. There are different sample sizes and we can argue all day about how those figures have been arrived at. There is certainly no evidence from those campaigns that the off-trade is particularly bad in terms of its likelihood to sell to under-age people. In the real world, in pubs, clubs, large and small shops, specialist off-licences, convenience stores, however you want to categorise them, there are a very, very small number of people who deserve very strong enforcement. The vast majority of people want to try to uphold the law and stay within the law. People make mistakes in all parts of the sector. I cannot say none of ours members has ever sold to someone under age because they have, but I think it is a problem that goes right across the trade and the solutions are improving. Certainly in our sector, while I am absolutely not trying to shift the blame to someone else and say it is not our problem, it clearly is, it is an issue we have been improving on. We look better than other parts of the sector when the test purchase results are published.

Q169 Mr Evans: As far as your own guidance to your own members is concerned, do you give any guidance about the retail of alcohol? Do you think there is a problem, particularly with smaller enterprises, where there is a high turnover of staff in that there is not sufficient training for staff about the retail of alcohol?

Mr Lowman: Yes. We promote the Challenge 21 policy and indeed I think over time that will move up in terms of the age limit a person will be challenged at. The purpose behind that is to say that if someone looks under 21 they should be challenged for proof of age to give the retailer and member of staff leeway. Judging whether someone is 18 or is 18 years a day or 17 and 363 days is impossible. You have to give
change in the trade here through cross-industry that person’s age. We are bringing about a cultural yourself some leeway to make a judgement about your own age. That is really important and it is good that that is happening. In terms of training, there is a high turnover of staff. Increasingly professional operators are making sure that people, before they get anywhere near a till, are trained in a number of provisions of the law and management of the business, but this is probably the number one issue. When we talk to retailers about business this is number one because the penalties are very severe and people can and do lose their licences on the basis of making under-age sales.

Mr Beadles: We provide the secretariat to the Retail of Alcohol Standards Group and that is a pan-industry grouping of large and small business and James is a part and the British Retail Consortium is a part and Challenge 21 is the principle it was based on, but we have moved beyond that and we have shared best practice in terms of training and in the course of the last couple of years we have dramatically changed how we train staff. It was very simple, it was based around “Here is the law. Do not break it.” What we have discovered is it is a much more complex issue than that. We have involved a number of universities in working out why, when you have just trained someone and you send them out into the shop floor, 20 minutes later they sell to an under-age person. What makes them do that? They are not bad people on the whole so why do they do it? A lot of it comes down to the psychology of how you assess someone’s age and then how you make the challenge. We have discovered that men and women do things very differently in terms of how they assess age and how they make a challenge. We have been working on the training programmes to get them to have a better understanding of how you work out how old someone is and then how you make the challenge in a way that does not lead to confrontation, particularly in the late night environment where that can be a serious problem. We are developing Challenge 21 and some of the industry have already moved towards Challenge 25. We think as an industry we are ready to move to Challenge 25 because enough 21 and 22 year olds have ID cards now that we can move there. The big work that we have been doing over the last two years is a project called Community Alcohol Partnerships which was trialed in a little place called St Neots in Cambridgeshire where we had some really dramatic impacts by working with local enforcement, local police, trading standards, local health and local education and the parents of the community. It is not just about stopping selling to those under age, it is about tackling under-age drinking, why young people want to drink, where they drink and how you tackle that. The results were very, very impressive, more than we could ever have hoped for. It is now seen as a model of best practice. It has been rolled out to Cambridge city. They are rolling it out into the whole of Cambridgeshire.

We are starting it in Reading, in north Yorkshire, in the Isle of Wight and Bath and in the middle of next month we will be announcing a partnership with Kent to roll the Community Alcohol Partnerships into the whole of Kent, so we are taking on an entire county. That is all about getting local people brought in to tackle local problems and getting the local papers involved in recognising where the issues are and that comes down to finding out who the bad eggs are, finding out who are the ones prepared to sell to kids or sell to drunk people and dealing with them because the people who run our shops and stores are part of the community, they do not believe that you should be selling alcohol to kids or to drunk people and they see themselves as the first line of enforcement, not the problem and they want to work in partnership with local police and local trading standards to stop them. Tackling something like proxy sales is incredibly difficult without the support of local police and local trading standards officers because as a shop owner you do not know whether someone has sent their kid in or an adult in to buy the product. Working with trading standards means you can tackle those problems.

Q170 Chairman: Jeremy, in your submission you concentrated specifically on the attitude taken by local authorities and what you describe as the “excessive burdens” being imposed by some authorities. Where do you think the problem lies? Is it the guidance from DCMS which is insufficient or is it that local authorities are exceeding their powers?

Mr Beadles: There are elements of both. The majority of local authorities we do not have any issues with and some provide really first class examples. The work that they have done in Cardiff city with the Millennium stadium there has been absolutely superb in terms of how they have built relationships with licensed premises. In some ways I think the guidance is not clear on some issues and some of it is enthusiastic licensing officers sometimes coming up with what they think are good ideas, but actually they provide problems on a local basis and some of it is just how they interpret the guidance. In terms of strengthening the guidance, I think we would like DCMS to look at whether there are some things that could be ruled out as not really appropriate, including requests for wiring maps as part of the licence application or things under the Food Safety Act and things like that. The problem with including that stuff is it is covered in other regulations already, but also if you include it in a licence application someone has a problem with something that has gone past its sell-by-date then theoretically they could lose their licence for it. That is not what the licence was for in the first place. Certainly we have seen some quite enthusiastic police forces come up with some ideas that on the surface look quite good but when you delve into them they do not necessarily present solutions.

Q171 Chairman: On the other hand, the convenience stores have argued particularly about the fee structure and the cost of this. You will be aware that
as a result of the Elton review fees may have to increase further in order to cover fully local authority costs. What is your reaction to that?

Mr Lowman: A number of councils are working within the current fee levels and are able to deliver the services they need to deliver on that basis. I think we should be looking at what they are doing and trying to roll that out as best practice. I do not accept that there is necessarily a need for an increase in fees. From our point of view, we already bear a huge proportional part of the fee increases put into the most recent Act. I think any change in fees needs to be more proportionate and needs to have a steeper grading in terms of which fees are applicable for different sizes of premises and different types of premises. There has been mention today about some of the costs associated with applications. There are other things that can be done to reduce the costs, things like changing advertising requirements for local papers and the fact that currently an applicant has to copy their application to seven different agencies. These things are not best regulation, they are not efficient and we should look at some of the reasons why the costs might be as high as they are, both costs borne by the applicant and obviously each of those seven agencies having to process that application.

Q172 Chairman: Can I just explore with you a couple of these costs which you have identified in your submission? Let us look at lawyer costs. How often does an applicant require professional legal advice?

Mr Lowman: Almost all new applications are done with legal advice. This is one of the things that has failed to transpire with the new Act. Under the old Act it was £30 for three years, it was less expensive in terms of the statutory costs, but the people getting a licence were having to go to the magistrates’ court and so they felt they should have a lawyer present with them. There was a sense that moving to a local authority administered scheme would allow people to cut out those legal costs. The reality of just how important an alcohol licence is to people, the conditions and the approaches to alcohol licence applications that some local authorities have adopted—and there are many excellent local authorities—have made a lot of applicants very cautious about their application and they clearly want that legal support.

Q173 Chairman: You also mentioned, in terms of the personal licence, a qualification fee of £150. What exactly is that?

Mr Lowman: That would be for obtaining a British Institute of Innkeeping (BII) qualification. We are in favour of staff being trained and certainly personal licence holders being trained to BII standards, but that cost is borne as part of a new application.

Q174 Chairman: Presumably it always was the case that you would encourage—

Mr Lowman: No, it was not. Previously you had to be judged to be a fit and proper person. There is a case for saying that training is a more objective way of judging than the previous test, but that was not required under the previous Act.

Q175 Chairman: In terms of relieving the burden, as was indicated earlier, not only do most people say they do not particularly want to have a completely new Licensing Act, I think it is unrealistic to suggest the Government is going to have to make major legislative changes. What would you like to see changed that can be done perhaps through guidance to help your members?

Mr Lowman: Guidance is the answer. We are not pushing for a new Licensing Act for the reasons you have stated. I think we need guidance which focuses on a number of points. Firstly, the evidence base around conditions being placed on licences, not just the evidence base of things happening in that area or things happening at that premises, but the cause and effects of conditional licences. We need to make sure that condition improve issues around alcohol harm, under-age drinking, whatever issue is identified in that area that is in line with licensable objectives. What is the cause and effect between conditions and outcomes there? We need to refocus case-by-case. Jeremy has mentioned some examples of local authorities perhaps pushing at the edges of their powers under the Act. One of the very important parts of the Act is that conditions have been placed on licences on a case-by-case basis. If one store in a town has certain problems it does not mean to say that all the stores in towns have the same problems and should be treated in the same way. Too often now we are hearing of examples where local authorities are trying to place standard conditions across all types of premises, ie all shops in an area and that is absolutely against the Act. If that proposal to impose that condition had gone in front of the magistrates’ court it is highly unlikely it would get through judicial standards of evidence and cause and effect. It is a very small minority of local authorities who are not interpreting the Act as we think appropriate. We need to make sure that they are only bringing in conditions when the evidence is up to that standard. Just because we are not using the magistrates’ court anymore does not mean that the evidence base which affects these people’s businesses should be diminished.

Mr Beadles: I would like to add a real life example to that one because it brings into play a lot of what James was talking about, which is that in Ealing recently local police and local trading standards tried to apply a blanket condition across all shops prohibiting the sale of any beer or cider over five and a half per cent. That might seem like an entirely reasonable condition if what you are seeking to do is to stop shops in a particular area selling strong beer/cider to homeless people. If that is what the aim is it can be seen as an entirely realistic condition, but applying a blanket condition across a whole range of shops actually means that you are requiring them to take off the market most of our premium ciders and beers. Most premium ciders in the UK—and we
have a serious heritage and industry—are over five and a half per cent. In seeking to tackle one issue the blanket condition can have a disproportionate effect on those kinds of businesses and if that spreads across the whole country you could have a really damaging impact on a home produced marketplace when actually what you were trying to tackle was something different.

Q176 Chairman: How do you address that?
Mr Beadles: It is to do with the guidance but also looking at it on a shop-by-shop basis. If there is a shop that has a serious problem with homelessness and drinkers around the shop area, they are more than happy to have a conversation with the local licensing authority about the rules. They may not have a problem with that at all, but they will probably not want their premium products to go as a result and they would not necessarily want to see it as a blanket condition across everywhere. We represent everyone from very big to very small and very specialist businesses. We would not want to see that kind of condition applying to specialist businesses that make their living through selling these products.
Chairman: I am sorry but we are going to have to stop there. We were slightly delayed in starting the final session. Thank you both very much for coming.
Tuesday 11 November 2008

Members present:

Mr John Whittingdale, in the Chair

Janet Anderson  Rosemary McKenna
Philip Davies  Adam Price
Paul Farrelly  Mr Adrian Sanders
Mr Mike Hall  Helen Southworth

Memorandum submitted by the Association of Licensed Multiple Retailers (ALMR)

INTRODUCTION

1. The Association of Licensed Multiple Retailers (ALMR) welcomes the opportunity to submit written
evidence as part of the above inquiry. As the only national trade body dedicated solely to representing the
needs and concerns of pub and bar operators, and a member of successive Ministerial Working Groups
looking at the development and implementation of the Act, the Association is well placed to comment on
its effects.

2. By way of background, the ALMR was formed in 1992 specifically to represent the interests of those
companies operating a small estate of pubs or bars, but without any interest in brewing. At the time, such
companies were not eligible for membership of the then Brewers’ Society. Lobbying for a change in the
licensing regime to reflect the needs and concerns of this new type of entrepreneurial business was high on the
new Association’s list of priorities and, during the 1990s, we chaired the industry working group developing
proposals for new personal licences; which directly fed into the 2000 White Paper, Time for Reform.

3. Today, just under 100 companies are in membership, representing 15,200 pubs and bars. Between them,
ALMR members operate around half the UK managed estate; that is, those outlets directly operated by the
company owning or leasing the property. Whilst we have a number of national companies within
membership, over two-thirds of members are small independent companies operating 50 pubs or fewer
under their own branding. As well as pubs and bars, our members operate restaurants, clubs and café bars.
These are predominantly suburban community or neighbourhood outlets.

LICENSE ACT OVERVIEW

4. The Licensing Act 2003 was a significant and substantial piece of legislation which introduced a seismic
shift in the way in which the industry was regulated—from a regime based around the separate licensing of
different activities, to one based around the premises in which those activities were carried out. It
consolidated six regimes for different types of outlet into one, harmonising the sale of alcohol with the
provision of regulated entertainment and the sale of late night refreshment. At a stroke, the number of forms
required for a diverse, multi-faceted business was reduced from 200 to 20, the plethora of licensing
authorities businesses needed to deal with—and the fees they had to pay to them—was consolidated into
one.

5. From a business perspective, it is this simplification of the regulatory regime which is the most
significant and practical effect arising from the new Act; and one which must be protected and retained at
all costs. The Licensing Act 2003 is a rigorous and robust piece of legislation which allows a licence and
conditions to be tailored exactly to the needs of a specific business. We would strongly urge politicians to
resist calls for special and additional licences to be applied to certain sectors of the entertainment industry,
such as those operators providing adult entertainment. This would be a wholly retrograde step and would
unravel the most beneficial commercial effect of the Licensing Act 2003. We fear that special treatment of
one category of outlet would swiftly see the return of different categories of licence for other types of outlet.

6. A single premises licence for multiple licensable activities has also encouraged the development of
hybrid style businesses—a move away from the traditional pub model based on consumption of alcohol
alone and towards an adaptable social space providing morning coffee, quality food and entertainment
within the same venue. There has been much scepticism about whether the Act has delivered a “café society”
and more diverse evening economy, but evidence from the ALMR’s Annual Industry Benchmarking Report
suggests that it is having an effect.
7. The UK pub, club and bar market has contracted over the past decade and a half. Since the introduction of the Licensing Act 2003, the number of outlets has declined by 3.5%. In the case of managed estate—ALMR members—the decline has been more pronounced. This overall trend masks some distinctive shifts in trading style, however.

**UK MANAGED PUB/BAR ESTATE**

<table>
<thead>
<tr>
<th></th>
<th>October 2004</th>
<th>October 2006</th>
<th>October 2008</th>
<th>% Change 2004-08</th>
</tr>
</thead>
<tbody>
<tr>
<td>Community local</td>
<td>4,311</td>
<td>3,225</td>
<td>2,750</td>
<td>−36%</td>
</tr>
<tr>
<td>Food led outlet</td>
<td>3,180</td>
<td>3,039</td>
<td>3,045</td>
<td>−4%</td>
</tr>
<tr>
<td>Town centre bar</td>
<td>3,428</td>
<td>3,478</td>
<td>3,260</td>
<td>−5%</td>
</tr>
<tr>
<td>Accommodation led</td>
<td>641</td>
<td>374</td>
<td>488</td>
<td>−24%</td>
</tr>
<tr>
<td>Nightclub</td>
<td>421</td>
<td>470</td>
<td>485</td>
<td>+15%</td>
</tr>
<tr>
<td>Seated café/wine bar</td>
<td>1,053</td>
<td>1,198</td>
<td>1,211</td>
<td>+15%</td>
</tr>
<tr>
<td>Total Managed Estate</td>
<td>13,034</td>
<td>11,784</td>
<td>11,239</td>
<td>−14%</td>
</tr>
</tbody>
</table>

Source: CGA /ALMR Benchmarking Survey.

8. As can be seen from the above table, it does appear that the Licensing Act has encouraged a shift towards a more café-style, seated operation in which food is as important as alcohol sales. Last year, the spend on casual eating out overtook spending on drinks for the first time. Change has been gradual and organic, with outlets broadening the scope of their offering. There has undoubtedly been a move away from the traditional public house model with the pub as an outlet for driving beer sales and now towards a more diverse commercial offering. The trend is undoubtedly market led, arising from demographic change, but it has nevertheless been accelerated in recent years as a result of regulatory change.

9. It was also anticipated that the introduction of the Licensing Act would result in a significant deregulation of outlet closing times. Change here has been evolutionary rather than revolutionary. Research conducted by CGA suggests that one in five pubs still closes at 11.00 pm and over 80% of outlets are closed by midnight. Fewer than 1% of pubs, clubs and bars (450) have a 24 hour licence, and we are only aware of two of those currently using that permission.

10. In contrast, however, there has been a significant shift in trading conditions in the off-licence sector which is directly attributable to the Licensing Act. Under the previous licensing regime, hours during which alcohol could be retailed in the off-trade were strictly regulated. No outlet could sell alcohol after 11.00 pm and product could only be retailed from a separate section of the store. These restrictions have been swept away. The presumption now is that alcohol can be sold at any time when the store is open and in any position. This has resulted in alcohol being actively promoted and price used as a key footfall driver. As a result, sales of alcohol through the pub channel have declined and the market share of the off-trade has increased significantly.

11. It is also worth noting in this context that the Act has directly contributed to an increase in professionalism and training in the sector. Since its introduction, over 250,000 individuals working in the sector have been issued with a personal licence.

Change in levels of nuisance, night-time offences or perceptions of public safety

12. When the Licensing Bill was being debated in Parliament, there was much concern that it would lead to a 24 hour, 7 day a week drinking climate, with a correspondingly adverse effect on crime, disorder and anti-social behaviour. Thankfully, the perceptions played out in the media at that time have not been reflected in the experience of our members and other operators. As has already been noted above, the change to licensing hours has been gradual and the impact on levels of nuisance, night-time offences and perceptions of public safety has been correspondingly limited.

13. In terms of perceptions, the effect of the Act has been undoubtedly positive. Half of all police licensing officers believe that the Act has had a positive impact on crime and disorder. There has been no statistically significant change in the proportion of people perceiving there to be high levels of anti-social behaviour over the past two years since the Act was introduced. Alcohol is also perceived to be less of a factor in overall levels of crime, disorder and public nuisance. In 2004, the British Crime Survey suggested that alcohol was perceived to be a factor in 48% of all crimes. That has now fallen to 44%, and the perceived risk of being a victim of crime is also at an all-time low of 24%.

14. Looking at actual night-time offences, police recorded crime statistics also show a significant drop in crime levels. Crime peaked in 1995 and has fallen by over 44% to 1981 levels since that date: 8.5 million fewer crimes. Indeed, there has been a 5% drop in violent night time crime and a 3% fall in less serious woundings since the introduction of the Licensing Act alone. It must be borne in mind that over half the offences included within the definition of violent crime involves no injury.
15. Official Home Office statistics show there have been 28,815 fewer offences since the Licensing Act was introduced. The decrease has been particularly pronounced in the early evening period to midnight.

<table>
<thead>
<tr>
<th>Crime Type</th>
<th>Net Fall</th>
</tr>
</thead>
<tbody>
<tr>
<td>Serious violent crime</td>
<td>−1,592</td>
</tr>
<tr>
<td>Less serious wounding</td>
<td>−20,620</td>
</tr>
<tr>
<td>Assault</td>
<td>−2,815</td>
</tr>
<tr>
<td>Harassment</td>
<td>3,627</td>
</tr>
<tr>
<td>Criminal damage</td>
<td>−6,078</td>
</tr>
<tr>
<td>Net fall</td>
<td>−28,815</td>
</tr>
</tbody>
</table>

16. It is true that the same statistics do show a small increase in crime between 3.00 am–6.00 am—up 22%—but this is from a very small base and represents just 10,000 additional offences over the course of the two year period. Crime during this time period is a very small proportion of overall crime, and the small increase is more than offset by the fall at all other times.

17. The ALMR Annual Industry Benchmarking Report suggests that the industry has made considerable levels of investment in security in and immediately around their premises which have contributed to the decline in crime and disorder (see table on Ev 68). This reveals an investment in door supervision and security of some 2.33% of turnover (averaged across the sector as a whole). This ranges from just under 1% of turnover for food and accommodation led outlets, to almost 9% for late-night businesses.

18. This decline in levels of crime is under-scored by other social indicators to suggest that the Licensing Act has had no adverse effect on anti-social behaviour and public safety. Analysis of A&E admissions suggests that there have been 6,000 fewer alcohol-related admissions since the introduction of Licensing Act. Office for National Statistics data also shows a steady decline in alcohol consumption in all age groups and across both sexes over the past decade, and more particularly since 2004.

19. Average weekly consumption for men has fallen 13% since 2000 to 14.9 units and for women by 3% to 6.3 units (having risen to a high of 7.6 units in 2002). The decline is more pronounced amongst younger age groups, with consumption levels for young men down 37% and for young women down 29%. The UK is now 14th of 20 EU countries in terms of per capita alcohol consumption.

20. Turning to look at nuisance, there is no evidence to suggest that the introduction of the Licensing Act has led to an increase in statutory or public nuisance. The most obvious source of this is noise nuisance, but evidence from the Chartered Institute of Environmental Health shows no change as a result of the Licensing Act and also suggests that noise nuisance from licensed premises is less of a problem than may be perceived.

21. The CIEH Annual Survey of Noise Enforcement for 2006–07 shows that noise from all leisure and commercial premises (not just entertainment venues) accounts for just 13% of all noise complaints and enforcement actions. In terms of incident numbers, there are 845 per million population for commercial uses as opposed to 4,329 per million population for domestic premises. The Live Music Forum report suggested that noise from entertainment venues constituted just 7% of all complaints, with six times as many complaints arising from domestic music.

22. The DCMS Statistical Bulletin for the period April 2006 to March 2007 suggests that the new Act is also having a positive effect in tackling any problems which may arise with particular premises. During that year, almost 700 licences were reviewed—the final and ultimate sanction after other powers of enforcement has been deployed. As a result, 92 were revoked and a further 91 suspended.

Impact on Live Music

23. The introduction of the Licensing Act has not led to the promised increase in live music. The removal of the old “two in a bar” rule, which allowed small pubs and bars to host small scale live music events without the need for a separate licence was completely swept away. The increased costs and difficulties of applying for a variation to an existing licence had a significant deterrent effect for many operators, resulting in an immediate decline in live music venues at the point of transition.

24. Those who did continue to include live music in their list of licensable activities have found that the controls applied to the business are often disproportionately costly. As a result, they seldom make use of their permission. In our experience, many local authorities automatically assume that live music will automatically result in a noise nuisance and place extensive and costly pre-emptive conditions on a licence.

25. The ALMR’s Annual Industry Benchmarking Report highlights the effect this has on operational practice. The report looks at common controllable site costs and asks operators to express these as a percentage of turnover. This reveals the true cost to the business. The results for entertainment are set out in the chart below, and show a 19% decline in music and live entertainment costs as a percentage of turnover across most sectors; in the case of community operators they have halved. With live entertainment costs going up in the club sector and remaining static for town centre outlets, the only logical explanation is that music and live entertainment is being sacrificed in order to keep a lid on costs.
26. We believe that there are some simple steps which could be taken to reverse this decline in live music within small venues. The existing exemption is only partial—disapplying conditions related to public nuisance at certain times of the day when live music is being played and then only for venues with a very restricted capacity—and its use is limited by being too complicated for most operators to understand and too complex to have practical application. We would therefore support the Live Music Forum’s recommendation that live unamplified music be exempted from the list of licensable activities. We also recommend that a form of the “two in a bar” rule be re-introduced to allow venues to offer live music performed by fewer than two musicians before 11.00 pm without the need for specific permission on their licence. The review process provides a mechanism for complaint and redress should the practical implementation of this cause problems to neighbouring residents.

Has the Act led or is likely to lead to a reduction in bureaucracy and have the anticipated financial savings been realised?

27. The ALMR has chosen to respond to these two questions together, because the answer to the latter is largely dependent on the former. The original Regulatory Impact Assessment to the Act estimated that the introduction of a new single licensing authority and the merging of six regimes into one would result in savings of some £1.9 billion over 10 years, or £190 million annually. DCMS itself estimates that the new regime has saved only £99 million per annum in red tape.

28. The anticipated savings to the industry have yet to be fully realised. This is in part due to the fact that the annual recurring costs to the industry are considerably higher than predicted. During the passage of the Act, the annual fees were estimated as being between £50–150 per outlet. In reality, they are between £70–350. We estimate that the transition to the new Licensing Act resulted in a one-off cost of £99 million to the industry, with ongoing costs of £40 million.

29. The second reason is that measures to remove additional unnecessary bureaucracy and costs for the industry appear to have stalled. The Government has recently announced that it will be introducing a new minor variation process, which should result in further cost savings, but this is an isolated move to further realise the cost savings anticipated in the Regulatory Impact Assessment.

30. In 2005, the Independent Fees Review panel recommended a series of measures to be taken to further simplify the licensing regime. This included a move to a common payment date for all annual fees, simplified advertising requirements and the introduction of electronic application. No progress has been made towards addressing these measures, despite them being included in the DCMS Better Regulation Simplification Plan 2006. All three of these measures would reduce bureaucracy and costs to businesses.

31. The average cost of applying for a straightforward licence is some £2,000, but it ranges from £1,000 to £4,000. The requirement to produce seven certified hard-copies of the application is a significant element of this. Making it mandatory for licensing authorities to accept electronic forms would allow for reduced costs. Equally, simplifying advertising requirements, and particularly abolishing the requirement to advertise in a local newspaper, would reduce costs for the business by some £400–600. The copying and advertising requirements are particularly onerous if small errors or omissions are made in the application requiring it to be resubmitted.
32. The move to a set day on which all annual fees would be payable would equally reduce administrative burdens, particularly on multiple businesses. At present, the fee is due on the anniversary of grant of the licence, and the onus is entirely on the business to remember to pay the fee on time; no reminders are sent out and often no invoices either. It is therefore incumbent on the business to log the date on which the fee is due and put in place a mechanism for ensuring it is paid. It is worth noting in this context that the Scottish Executive, in its proposals for a new licensing regime, have moved to a single payment date and also require licensing boards to send out reminders.

33. We estimate that these three measures would save the trade an estimated additional £20–25 million per annum.

CONCLUSION

34. The Licensing Act 2003 represented a significant change in the way in which the sale of alcohol, provision of entertainment and late night refreshment were regulated. Such a complex and detailed piece of legislation takes time to bed down, and many of its effects can only fully be assessed now.

35. The single most beneficial change for operators was the reduction in red tape and bureaucracy resulting from the simplification of the old regime, based around the separate licensing of different types of activity, to a single premises licence allowing a range of different activities to be provided. This also allowed the licence to be exactly tailored to the needs of the business and the risks it posed to public order, safety and nuisance. As a result, despite extensive deregulation, the introduction of the Act has not had a harmful effect on any of these. There may now only be one type of licence, but in reality there are over 57,000 different and individual licences in the on-trade alone.

36. The second most significant effect has been the positive response of the industry to that liberalisation. There is now real evidence of a move towards a more diverse and broadly based offering, with a significant shift towards seated café-style operations—the only sector to buck the trend of a contracting market. The industry has also invested heavily in security and staff training on the back of the Act.

37. Despite this, however, the Licensing Act has failed to deliver in full its promise of financial savings and reduced bureaucracy. Less than half the anticipated savings set out in the initial Regulatory Impact Assessment have been realised. This is in part due to the slow progress of further reform. Problems with the Act were identified by the industry and other stakeholders in early 2005 following our experiences during transition. Changes were recommended by the Independent Fees Review panel in 2005 and again in 2006. Despite issuing a departmental simplification plan in 2006 committing to further deregulation, the Government has yet to formally respond to—let alone take forward—the panel’s recommendations.

38. If the full positive benefits of the Act are to be delivered, we recommend the Government take the following actions:

— exempt unamplified live music from the scope of the definition of regulated entertainment;
— re-introduce the “two in a bar” rule to allow smaller premises to continue to provide live music before 11.00 pm free from the fear of unnecessary interference from the licensing authority;
— move immediately to common payment date for annual fees;
— make it mandatory for licensing and other regulatory authorities to accept electronic applications and fees; and
— abolish the requirement to advertise applications in local papers.

39. We would be happy to expand on any of the points raised in this paper, and would welcome the opportunity to present oral evidence as part of the inquiry.

October 2008

Memorandum submitted by the British Beer and Pub Association (BBPA)

EXECUTIVE SUMMARY

— 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, and
  — 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 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 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% 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.

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 2% 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% 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

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 one million in 2007–08.” 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.”

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”.

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.

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.”

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 91 revoked. 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.

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 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, e.g. 9.00 pm. With the advent of the 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.

3 Welsh police praise Licensing Act (Morning Advertiser, November 2007).
4 Manchester City Council Licensing Policy 2008–11.
5 CGA Strategy poll of licensed premises (for DCMS, March 2008).
8 Daniel Thwaites Plc vs Wirral Borough Magistrates Court (6 May 2008).
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”.9 Violent crime fell by 3% overall in the year after the change, although there was an increase in the small proportion of violent crimes occurring between 3.00 am and 5.00 am in the first year of the new licensing regime.10

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”.11 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”.12

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.13

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”.14

2.9 Again, there is no evidence that the Licensing Act 2003 has led to any significant increase in the overall number of time-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.15

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

---

11 Safe, Sensible, Social—Consultation on Further Action (Department of Health, July 2008).
music.” 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 “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. 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 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 10 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.

16 Live Music Forum Findings and Recommendations (for DCMS, July 2007).
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; and
— 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; and
— 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 underage 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.

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 £400 million 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; and
- 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 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.18 Despite this, 78% of all people drink about the same amount as they did before the Act came into effect.19 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”.20

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.

---

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.

Annex 2

**Licensing Policies and the Licensing Act Introduction**

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 2004-05 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.

<table>
<thead>
<tr>
<th>Length of Response (page)</th>
<th>Number of Policies</th>
</tr>
</thead>
<tbody>
<tr>
<td>5–10</td>
<td>23</td>
</tr>
<tr>
<td>3–4</td>
<td>140</td>
</tr>
<tr>
<td>1–2</td>
<td>130</td>
</tr>
<tr>
<td></td>
<td>293</td>
</tr>
</tbody>
</table>

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
- Ignored BBPA’s 2004 Recommendations
- Enforces glass or polycarbonates
- DPS must be on site at all times
- Problems with operating schedule
- Compulsory late-night doorknocks
- Membership of a Pubwatch as a condition
- CCTV as a condition
- Reminder that Hampton Principles must be followed
Witnesses: Mr Rob Hayward, Chief Executive, Dr Martin Rawlings, Director of Pub and Leisure, British Beer and Pub Association, Mr John McNamara, Chief Executive, British Institute of Innkeeping and Mr Nick Bish, Chief Executive, Association of Licensed Multiple Retailers, gave evidence.

Q177 Chairman: Good morning everybody. This is a further session of the Committee’s inquiry into the implementation of the Licensing Act and I am pleased to welcome for our first part Rob Hayward, Chief Executive of the British Beer and Pub Association and Dr Martin Rawlings. Director of Pub and Leisure, alongside John McNamara, the Chief Executive of British Institute of Innkeeping and Nick Bish, Chief Executive, Association of Licensed Multiple Retailers. Just before we start I
should inform witnesses and the Committee that at 11 o'clock we will be pausing in order to observe the two minute silence, for which I think we should stand. Perhaps I could begin. The Government in bringing forward the Licensing Act said that it intended to bring about a streamlined procedure, clearer objectives and greater democracy in decisions; do you think that they have succeeded in that aim?

**Mr Hayward:** As well as the sale of alcohol?

**Dr Rawlings:** Yes, very broadly, it has achieved all those things, I think. We would certainly say that the Licensing Act, applied properly, is a good piece of legislation.

**Mr Bish:** We would go further to say that it should be the only piece of legislation to deal with licensing.

It had the virtue of bringing together multifarious acts that have been built over the years to deal with the specific circumstances and all those were assembled in one piece of legislation, and we would strongly urge that is where licensing stays and that future amendments, future rules that relate to the new circumstances as they arise should not be hijacked or certainly diverted into health or police type legislation because we understand licensing—most of the stakeholders have come to adopt it and they work with it and we believe that it works on that basis. It is evolving; it is not perfect but it is good—fit for purpose I think is the expression.

**Mr McNamara:** I think I would agree with those comments. The other element is the fact that there was a considerable debate about whether licensing should move from magistrates to the local authorities; I think the fact that it has moved to local authorities has brought licensees, local authorities and the police closer together and that is demonstrated in a number of areas in terms of joint ventures and corporate ventures to improve night time economies.

**Chairman:** As they say on the X-Factor that sounds like three yeses to me! Adrian Sanders.

**Q178 Mr Sanders:** The Government also wanted to encourage more diversity in the type of licensed premises on the high street. Do you believe that the regulatory changes contained within the Act have actually facilitated a shift to more venues that can be enjoyed by all the family, mixing both casual eating as well as the sale of alcohol?

**Mr Hayward:** If I take that first. I am not sure that it is specifically the Licensing Act or the regulatory changes associated with it that have seen that. What you have tended to see over the last decade or so is a progression whereby you blur the difference between pubs, nightclubs, restaurants so that you have loads of restaurants in pubs, etcetera. It is not because of the Licensing Act, I think it has come as a result of general changes within the whole hospitality economy. One thing I think we all regret that we have not seen yet is that we were hoping—and I think that is true of local government and also the police—that we would see a demographic shift, particularly in the city centres, the high energy areas of the cities and the towns, wherever they may happen to be. So that, for example, people would leave the theatres in the West End and stay on and therefore you would have older people mixing in with the younger people in the different venues. We have not seen that shift and I think that is one that we would still like to see. That cannot only be achieved by ourselves, of course, it has to be achieved with—particularly in London, for example, and also in places like Manchester and Leeds—a change in terms of transport facilities because there is no encouragement for people coming out of theatres to stay if they are then not going to be able to get on a tube to get home. Therefore, there need to be other shifts within the economy as well that will actually achieve that; but it is not because of the Licensing Act, it is because of the general changes.

**Q179 Mr Sanders:** What you are really saying is that it is more about market forces than the Act that is behind that changed market within licensed establishments. But surely there are decent public transport facilities quite late into the evening here in London, and yet it is not happening where you do have that transport. Is transport the only reason that it is not happening?

**Mr Hayward:** No, it is not the only one, but it is a factor. People feel that they are not certain what time the last tube is going to go—you ask the vast majority of people, tourists in particular and people who come in from the outer parts of London. But it is also true in other cities as well. People are not sure what time they can catch reasonably a bus from the centre of Manchester going out or wherever they happen to be, having been to a major concert venue or whatever it may happen to be in the town centre. It is a social and market force change, but it is not by any stretch of the imagination the sole reason.

**Q180 Mr Sanders:** Can I put it to you guys that actually it is probably more the atmosphere in a town centre later on at night that deters older folk from remaining in those town centres later at night, rather than anything to do with the Act. The question is: what efforts is your sector making to tackle that night time disorder, whether it is actual disorder or fear of disorder?

**Mr Bish:** The statistics we have are Home Office statistics, that the fear of crime and disorder is declining, and indeed in the statistics on crime associated with alcohol the only area that they have increased is in the late part of the night. So we think there is actually greater movement than perhaps the media would acknowledge certainly towards this virtuous outcome. We certainly are taking huge steps for control of drinking in licensed premises and I think all four of us representing the on-trade here largely agree. Investment in security and controls and the understanding of our corporate social responsibility have never been higher than they are now, and all the statistics say that the situation is getting better. I accept entirely that there is a perception that the night-time is young people’s time and it is the flip side of the coin to what Rob has just said, that if we can encourage older, more mature people to leaven the mix in the middle of the night that is to be encouraged. Some of it is marketing and some of it is the facilities that are available. It is not
just the tube, of course. South of the River it is
certainly to do with last trains into the outer lying
suburbs and the Home Counties’ towns. We feel that
we are very much on the case but recognising that
there is a lot to do. There is a social change of young
people coming out later, which is a different matter
and is much more to do with the availability of cheap
alcohol through supermarkets. We have found
changes in the aspirations of young people going out
to clubs and pubs and bars late at night.

Q181 Mr Sanders: There has been a lot of news
about that this week. I know that the Superintendent
of Police in my area, which was highlighted in the
national news yesterday, has tried very hard to get an
agreement with the licensed trade—not the
supermarkets but your establishments—to actually
end happy hours, and it was your industry that said
no. So do you not feel that there is a responsibility
that you have or part that you play in fuelling that
disorder early in the evening? And do not use the
excuse, “Oh, well, the supermarkets do it.” the fact
is that your industry does do very cheap deals on
alcohol; you try to get volume sales, which is not a
responsible way of selling the alcohol, in my opinion,
and what more can you do to actually stop that
practice and help to reduce the disorder?

Mr Hayward: If I can pick up on that? The British
Beer and Pub Association three years ago
introduced a promotions policy which encouraged
all its members—which is about 55%–60% of the
total pubs’ market in the UK—to debar certain
forms of promotion, particularly either speed
drinking, ie cheap drinks until England score or
something like that—I speak here as a rugby man
rather than a football man—or alternatively
quantity—£5 and all you can drink, or inviting
women in free to encourage consumption. We did
that three years ago and it was welcomed by
ministers at the time. We have looked at that very
carefully and we have looked at the advice in the
government’s alcohol strategy and it is quite clear
from the advice that has been given that we cannot
come together to do that. When I was at the Prime
Minister’s summit in November last year I
specifically said that we could not maintain that
promotions policy without assistance from
government because it was being deemed to be in
breach of competition law. The industry in general,
the broad body of the church, would like those
policies to be maintained, but we have been clearly
advised by our lawyers that we cannot continue to
do that because it would be deemed to be anti-
competitive. If this Committee or any other
Committee can actually help us with maintaining
that policy for the vast majority of the pubs and
clubs but make sure it also applies to the off-trade
then we would say thank you very much because it
is something we want to maintain; we do believe
there are elements of irresponsible promotions
around and we would like to see them disappear.

Mr McNamara: Can I give a specific example on
where the industry is trying to improve night-time
areas and give better experiences for customers and
that is in the Best Pub Scheme which is now in 88
towns and cities across the UK. That is an award
scheme where licensed premises enter that award
every year and if they reach that benchmark
standard, which is way above the legal requirement
around caring for customers, looking at
neighbourhood relationships, not serving under age
people, responsible retailing of alcohol, proper
dispersal policies, all of those, that is a very, very
successful scheme. It started in Manchester four or
five years ago and is proven in the areas where it goes
in to have a remarkable impact, a positive impact,
and that is an example where the industry, police and
local authorities come together and make that work
year on year. There is some pump prime funding
from the Home Office which is being used now but
the industries come together and grab hold of that
with police and local authorities. This is a positive
example of where it can work at a local level and
where it is working and that is something that is
worth reflecting on. I think that partly the Act has
helped to create that environment where those
groups can come together.

Q182 Helen Southworth: Can I just take you back to
the issue of promotions? It is an absolute
responsibility on a licensee who is selling the alcohol
not to sell alcohol to a degree that would cause
somebody to become drunk; is that right? Am I right
in believing that you have a responsibility not to sell
alcohol to somebody if that alcohol would make
them drunk?

Dr Rawlings: No, it is not.

Q183 Helen Southworth: It is only if they are
currently too drunk in your opinion?

Dr Rawlings: The offence is to serve a drunk.

Q184 Helen Southworth: To serve a drunk. So it is
not an offence to serve somebody you believe to be
nearly a drunk, just somebody you believe to be a
drunk?

Mr Bish: The law has difficulty in defining what a
drunk is, so nearly a drunk is going to be very
complicated.

Q185 Helen Southworth: That sounds really funny
but it does not sound at all funny when you are out
in the evening and incidents happen, as they do in
many of our town centres, when people are trying to
go out and have an evening out and enjoy themselves
and get home safely, and have had a good time and
when I always think that the industry actually wants
people to do that, it wants them to go out and have
a good time and come back again.

Mr Bish: Of course.

Q186 Helen Southworth: So it actually is not funny
that there is an issue—

Mr Bish: I did not make a joke.

Q187 Helen Southworth: [...] about people who are
consumming too much alcohol, in some cases because
they choose to and in other cases because they are
not aware of what the impact is going to be on them
if they did so. So do you not think that it is absolutely
crucial that we get the issue of responsible drinking across and those licensees and landlords are a part of that process?

**Mr Bish:** Yes.

**Q188 Helen Southworth:** That it is not just good enough to say, “We have brought in a promotions policy but our advice is that it will not stick”.

**Mr Bish:** But that is the law.

**Q189 Helen Southworth:** You have a key role to play, so you have to make it work.

**Mr Bish:** That is the law. Rob can help us with his legal advice but I think universally across the industry we have been part of, contribute to and operate on a day-to-day basis with a mantra of corporate social responsibility. That is the benefit of the Act.

**Q190 Helen Southworth:** You said earlier on that the Licensing Act was working; you are now saying that there is a major flaw and it is not working.

**Mr Bish:** You said earlier on that the Licensing Act was working; you are now saying that there is a major flaw and it is not working.

**Mr Haywards:** No.

**Dr Rawlings:** If I could answer that? There are two things. One is preventative and at the other end of the scale if there are people emerging from pubs, bars or whatever that are drunk then there is a review process within the Act to take care of that. The police have powers to shut down a place immediately if they wish to. So there are actions and actions are taken against those venues. So it is not quite true to say that they can carry on serving drunk people willy-nilly.

**Q191 Helen Southworth:** I would have thought then that there was an absolute responsibility for your industry to be able to give advice to the people within your industry how to do that?

**Mr Bish:** Yes

**Mr Hayward:** Yes.

**Mr McNamara:** As a members’ organisation we have 40,000 members and many of those are frontline licensees and we have lived for 27 years on the basis of social responsibility, making sure that our members are equipped to deal with the sorts of situation about which you are talking. If we had a group of licensees in this room they would say that they know in their pub—they hear first where that trouble is and know exactly where that trouble is being caused and take the appropriate steps. That is what we live and breathe by and that ongoing activity of frontline licensees, the vast majority of licensed premises in this country are very, very well run and are well regulated by the individuals who run them. The vast majority are. Unfortunately we have a number of instances, a number of examples where they are not well run and I agree that the Act is in place to focus on those individual premises, and we would totally support full enforcement of the Act and full use of every single power within it to close those premises if need be.

**Mr Hayward:** In relation to pubs and bars about 80% of all assaults are associated with refusals—either refusals to serve under age or refusals to serve drunks. We are in the on-trade generally refusing—because most major pubs now have a refusals register on the tills—a million serves a month for under age, for drunk and for other reasons. So there is a very strong amount of action being taken. As John said there is still more to be done and nobody is complacent because, as we say, the level of assaults on staff for refusals is very high. We need to ensure that we train our staff correctly and we need to ensure that we operate. But, as John said, there are some that need action taken against them and, as Martin said, those avenues are open and in many cases we are involved with them in one form or another with the police and with local government when they come for reviews.

**Q192 Adam Price:** You said a few moments ago that while the figures seem to suggest that alcohol-created violent disorder is falling generally there might be some evidence of an increase later in the night. Can you tell us a bit more about that?

**Mr Bish:** These of course are police figures through the Home Office published statistics. Our interpretation of them would be that, by and large, to the extent that the Licensing Act itself is part of this—and of course it is only part of that process—the possibility is that because we are talking about flexible closing times, instead of the old 11 o’clock chuck-out and the concentration of police time around then it is likely that the police have spread their resources—some would say these are too thin for them, but that is their argument and a separate one from this meeting, I suggest. But I believe there are more police around later in the night and therefore people who are offending get spotted and arrested, which is quite right and proper, and that is possibly the reason—possibly the reason—but we do not know because there are not that many pubs and clubs and bars extending their opening way into the night; against perhaps what the media might have suggested. I think 80% of pubs are closed by midnight and those who used to open later under the old entertainment legislation are still closing at about two or three—they have not much moved. So offences at that time of night perhaps need a little more understanding as to whether they are alcohol-related or to other issues.

**Dr Rawlings:** I would just say that those figures were taken just after the Act was introduced in 2005, so they are the first six months of the Act. What none of us know is what reaction to the police, to the trade has been as to whether those figures are still actually valid in that sense.

**Q193 Adam Price:** Something to keep under review then?

**Dr Rawlings:** Absolutely.

**Q194 Philip Davies:** Could I first of all apologise for being late. Can I provide a slightly different perspective and see what you make of this one. My contention would be that the vast majority of people who have drinks in happy hour and the vast majority of people who buy drinks from the supermarket do so responsibly; they drink responsibly, they do not cause any aggro, they do not cause any violence at
the end of the night or anything like that. I remember when I worked in Leeds there was a pub just round the corner from where I worked that had a happy hour and basically people went from work and it basically meant that a round cost half the price it would have otherwise cost or it lasted twice as long as it otherwise would have done; it was not that we were actually all going out fighting at the end of the evening—it was essentially to the customers' benefit. So why should decent, responsible, law abiding people have to pay considerably more for their alcohol just because the police are not adequately dealing with a bunch of hooligans who cannot take their drink at the end of the night?

Mr McNamara: I think there is a lot I would agree with in that statement, bearing in mind that happy hours and promotions have been running for years—many, many years. Going back to the code of practice, that code of practice talks about happy hours being run in a responsible way, i.e. limited periods; there is not massive discounting; there is no incentive to consume alcohol in that period. That is a legitimate sale that we would all support and certainly my members would operate that in the way we have implied.

Chairman: I am going to interrupt the proceedings for the two minute silence.

There followed two minutes' silence

Q195 Chairman: Mr McNamara, you were saying?
Mr McNamara: The issue I guess my members would have is when is a happy hour an irresponsible promotion? Partly—and I have been on the platform many times—the problem I had with some promotions is, “Come in and drink what you can for £10” or £5 and that in my view is not acceptable and can create the atmosphere of a need to get your money's worth before you leave. For my membership that is a problem.

Dr Rawlings: Further to that, it was a debate as the Licensing Act went through Parliament whether happy hours were a problem or not. There was no evidence then and there is no evidence now that happy hours in themselves caused a problem. John is quite right; there are other promotions that do. Happy hours generally take place at six in the evening and problems, we know, are much later in the night. The recent report showed no connection between happy hours and problems; they come from a different source and they come from different sorts of people.

Q196 Paul Farrelly: You say that other promotions do; can you be more specific?
Dr Rawlings: We are certainly not keen on those that say, “Pay £5 and drink all you like all night” for instance, and those specifically in the code would prohibit racing games—a pint when a goal is scored and those sorts of things.

Q197 Philip Davies: Can I press you on that particular point just to play devil’s advocate? I know lots of political functions that have as their theme that you have to pay for a ticket and that includes the drink for the night and you drink as much as you can. It does not mean to say that everybody gets blind drunk at the end of the night and cannot go home and that they cause problems. Most people, even under those promotions, still drink sensibly and know when to stop. This idea that if you do a promotion of this nature everybody is just going to carry on until they start fighting at the end of the night is ludicrous. It is always going to be a tiny minority so why should the majority of my constituents who drink responsibly suffer because of a handful of idiots?

Mr Hayward: I think that is one of the important points about the legislation, the Licensing Act. The principle of the Licensing Act is that you treat, in association between the industry, the police and the local authority, each venue as a venue and decide whether it is well run or not and therefore whether it can run certain forms of promotions, general events or whatever, and it is therefore down to the local authorities to decide whether action reviews will be taken. It is always dangerous to operate a blanket system. In fact I was a guest at the Labour Party conference fundraiser in Manchester where all the drink was provided on the basis of the ticket. That would, if you had a blanket ban, actually be illegal. I know that the Tory Party does exactly the same thing. So one has to be very careful about what you attempt to ban or not and therefore you should judge event by event and venue by venue, and that is the principle of the Licensing Act itself.

Q198 Philip Davies: Surely the point is that it is not promotions that cause problems; it is people that cause violence. There is nothing to suggest that even if they had not been drinking during a happy hour or during a promotion that these same people would have got blind drunk by the end of the night and been violent.

Mr Hayward: I think the judgment one takes—and Ms Southworth was pursuing this, I think quite reasonably—is that while it is down to the individual to be responsible it is also down to the landlord and the venue to be responsible and ask “will a promotion of a certain sort encourage a certain sort of behaviour”? If that judgment is taken by the police, by the local authority, by the landlord that it will encourage a certain sort of behaviour then that promotion should not be run. We had a case last week in Ealing where Ealing borough has approved “pay a certain sum and you can drink all you want” and has taken the judgment that that venue can run that promotion effectively, so it is a judgment taken by the authorities in discussion with each other.

Q199 Philip Davies: But the logic of this argument is that somebody who goes to the pub, a proportion of those people will get drunk and be violent so let us stop anybody going to the pub and drinking any alcohol. That is the logic if you start going down that line; that is the logic of the position that you end up banning pubs and banning alcohol.

Mr Bish: Really rephrasing what Rob has just said, that the industry has its commercial interest to supply an environment which includes alcohol for...
individuals and responsible people. We operate within the context of the Act, which is to keep everybody on, as it were, the straight and narrow. But how straight and how narrow is a matter of flexibility and under the Act we have this opportunity to flex it according to the behaviour of people and the responsibility of the premises. It seems to work, largely.

Q200 Helen Southworth: I have a great deal of sympathy with what Philip is saying and in fact very many of my constituents are saying exactly the same thing, that they want to see a balance between something that, as I said before, enables them to go out and have a good time and get home safely, but that is also safe for people generally beyond that. Can we look more at what you believe is an acceptable or not acceptable promotion? I would specifically like to ask you how would you view the kinds of things that say that you can have four shots of vodka or whatever in a glass for £5? Are those sorts of things acceptable promotions, bearing in mind what the health guidelines are for consumption of alcohol at a time?

Mr Hayward: I must admit that I cannot think of where that has happened and we have not had it drawn to our attention where that sort of promotion has been operated and if we had we would have looked at it, because we have had certain sorts of promotions drawn to our attention by everybody from Alcohol Concern to local licensing officers.

Q201 Helen Southworth: How would you see four shots in four glasses for £5?

Mr Hayward: I do not even know how much a shot costs.

Mr Bish: It depends on how much you are paying for it and over what period of time it is meant to be consumed.

Q202 Helen Southworth: The reason I am asking this is because I am trying to find out whether you see a difference between somebody being able to consume, to buy things which are open already, served open to them in volume, when they cannot take them anywhere else and they cannot save them for later, or not. In my town, for example, we have a barrier in place that says you cannot walk around with open alcohol containers. So if you do buy two glasses of wine and get the rest of the bottle free you actually have to drink it or leave it behind you.

Mr Bish: Yes, which happens.

Q203 Helen Southworth: Do you think there is a difference between a promotion—

Mr Bish: I am burning to say, in answer to your earlier question, that it occurs to me—and it is perhaps a personal view but I think I am qualified to say it—I think that the difference in promotions is whether the purpose is to consume alcohol and get drunk or whether the alcohol is a vehicle that is part of the enjoyment package. So, the happy hour—lots of your mates at an appropriate time, after work before you catch your train home, sort of thing; that is the occasion. If the promotion has the intention of consuming alcohol with the purpose of getting drunk, then I think that that is irresponsible. That is Nick Bish speaking but I think it makes some sort of sense.

Q204 Rosemary McKenna: My father had a pub in Glasgow many years ago when the licensing laws changed and I remember this debate taking place then, in exactly the same terms and in exactly the same atmosphere, and the licensee was the one who was always blamed for all the problems. I think the difference today is that number of young people who arrive at a venue have been drinking at home on cheap booze and over-indulging, and then arrive at a venue—arriving in a city centre or a town centre or a village or wherever. I think the problem stems more from that than from what is actually happening in licensed premises. I think what is happening is that you are being asked then to either deny them entry or deny them more alcohol when they come in. How do we get around that problem because I see that as the biggest issue rather than what the landlords are selling—more that they are arriving with too much to drink.

Mr Hayward: I think I would probably concur with your initial assessment about the social changes that we have watched. I used to go to Glasgow regularly in the seventies before the licensing laws changed and I found it an uncivilised experience to say the least. I think there is nobody suggesting that we go back to the period before that. Picking up on your observations, I made the comment earlier on about the refusals. Both because of requirements and also because of changes in practices there are more security staff at more pubs that operate the larger venues and ones that operate later at night—it is standard—and I made the comments about refusals, and it is a judgment as you go through the process, either at the door or the bar, as to whether people should be allowed access, either to the venue or alternatively to the bar itself. But, as I say, there is this problem in terms of the difficulty that arises both for the staff and also for the police because if they are refused access then groups of people move from one venue to another trying to get in and the police are left to pick up the pieces. One of the difficulties that then arises—and it is associated with the issue I know that Simon O’Brien and others touched on when they were giving evidence to this Committee—as to the police, if you arrest somebody you are then taking that policeman off the city centre for a very long period of time as they have to go through an inordinate amount of paperwork. I have had discussions both with government ministers and also with Opposition spokesmen as to how you can reduce that workload on the police, so that if they do arrest those people—and we believe that they should be—then the police are back on the street as quickly as possible rather than taken out of the system and filling up paperwork for several hours.

Dr Rawlings: Can I just add that if you are looking for solutions—and it is quite a difficult one—I recall that back in Sweden when I worked there many years ago, if they did that when it happened on a Friday that Saturday nights were somewhat chaotic
because of it. What we need to look for is local solutions and probably the best routes for that are the business improvement districts, and there are now over 60 around the country. Birmingham, I think, is probably the prime example here, in Broad Street, who have just put into their report that their offences are down from 3,300 in 2005 to little more than 1,000 this last year. That is real partnership working. We have a project going in Nottingham, now under a bid process, which is actually the first late night economy bid in the country, which is exclusively supported by licensed premises. The purpose there is to make people feel safer and enjoy things so that you do not attract the wrong behaviour and, if you do, you actually have some mechanism to deal with it; and it is as much about street lighting and putting up flowers as it is about policing, and that to me is the hard work that we are trying to put in to actually solve some of these problems.

Q205 Paul Farrelly: We are going to move on to live music but before we do, can I ask one final question? Mr Hayward, before the devil’s advocate took further aim at the Taliban you looked as if you were keen to jump in and add to Mr Rawlings’ short list of promotions that cause more concern.

Mr Hayward: I was going to refer back because I am not sure that Mr Davies heard my comments earlier on, which were essentially those that were either speed or quantity driven, which I think matches with what Nick Bish made the comment about.

Q206 Janet Anderson: Can I just say that I wholeheartedly agree with Rosemary with the problem about people pre-loading and I think there is a big problem with these small retail outlets that are selling very cheap drink because I see that all the time in my constituency. I just wanted to press you a little more and briefly, if I could, on the effects of the flexibility in closing times because we all remember the lurid headlines in the Daily Mail saying that this was going to create a hell on earth and actually that has not happened, has it? Is it true that most places are closed by midnight?

Mr Hayward: 80%.

Q207 Janet Anderson: I think there are only 450 24-hour licenses and only two of them are used. I would be interested to know why both of them seem to be in Blandford Forum in Dorset—I do not know why that is!

Mr McNamara: It is the Railway Hotel; it is a lovely pub!

Q208 Janet Anderson: Pressing you again on the antisocial disorder—and Nick, you were saying that it happens later at night and some of our evidence says that it tends to happen between 3.00 am and 6.00 am in the morning—most places are closed by midnight so there is a three-hour gap there; so what are they doing in between?

Mr Bish: That is not to say that they are all closed by then and of course the other 20% is where we need to look to see to what extent they are open; but it is perhaps a question for the police as well to establish what the offences are and to what they attribute them at that time. It is presumably partly alcohol, but we know that alcohol comes from a number of different places and you can get alcohol 24 hours a day if you want to, and I do not mean on licensed premises—you could have it with you and it can still be purchased at that time of night—and there is this mood about younger people to live a night time economy and to continue it through and that is perhaps where the crime is coming. The statistic is 22%, I think, increase in that time zone. So that is a percentage increase on a relatively small number of crimes. Obviously a crime is a crime and to the victim it is a 100% issue. But I think that is the area for examination and we do not know the answer. As Martin said, the figures are actually fairly elderly now.

Mr Hayward: It is a classic example under the Licensing Act of work still in progress. It does not appear to have come from the Licensing Act itself because those venues that were open until 2 o’clock generally are the ones that did not actually extend their hours; the ones that were forced to close at 11 were the ones that generally extended somewhat on Thursday, Friday and Saturday. It is not just the police figures that have been cited, as Nick says, from a very small base, but it is something that comes up from the ambulance service as well. As Nick says, it is to do with alcohol and may have to do with other things as well—probably drugs as well, I think—but we need to find out what that is so that we can actually tackle it with the police and with the local authorities.

Q209 Janet Anderson: But would you say overall, contrary to all the scaremongering that we saw at the time, that the picture is that people are actually drinking less and that disorder has gone down. Is that an accurate description?

Mr Hayward: The irony is that the alcohol consumption figures on a per capita basis across the whole of the country actually declined for the first time at the point when the Licensing Act was introduced. I am not putting it to the Licensing Act, it is just a statistical anomaly which fascinates me; but, as Nick said earlier on, crime figures have certainly declined in the last ten years.

Q210 Paul Farrelly: Should live music in pubs need to be licensed or, put a different way, should we not have a more permissive regime so that if people want to have live music in pubs they do not need to have to go through the bureaucracy of altering their licence; that there should be an assumption that it is allowable with a warning that if it is not done responsibly then the authorities may vary the licence themselves?

Mr Bish: ALMR has certainly recommended re-examination of what used to be called the two-in-a-bar rule that disappeared at the time of the Licensing Act, we regretted that at the time because our own ALMR benchmarking research has shown that the music expenditure has gone down by 19% as a proportion of sales, which is an awful lot, and we
believe that it is the informality of local entry level music, if you like, in pubs that adds to the type and style of the pub. It calms people down in the context of alcohol; it enlivens them in the context of music, you could say. We miss that and we would strongly urge the Committee to ask that that be revisited in any future amendments.

Dr Rawlings: I declare an interest that I was on the Music Forum and I am sure that Feargal Sharkey will tell you more about that in a moment. Certainly from the pub perspective Nick is actually right because it was one of the strange things when the Act went through that it was the only activity that you were not enabled to grandfather, the two-in-a-bar rule. So if you had permission already to run great big concerts or loud music events you could carry on; but if you only had two-in-a-bar you could not unless you expressly applied for it. Unfortunately a lot of pubs were quite worried by the whole process, as you might imagine, and in effect played safe and just grandfathered their licence without picking up the music element of it. So you now have a lot of pubs who could quite easily put on very small, nice cosy events, if you like, that would have to get permission. The problem now is that they would have to reapply under the variation process to do that and that is expensive. We are hoping that minor variations would actually take some of that heat away and address that. As I say, just to have the odd guitarist and the folk singer is good and it is actually good for business and good for people and we would like to see a lot more of it.

Mr McNamara: From a frontline licensee’s point of view I would endorse that. It seemed a shame to us that you lost a chance of having impromptu music with two in a relatively small pub on a spontaneous basis, very often, with those musicians getting paid for that. It is a shame that was lost and I think that is something we would certainly support.

Q211 Paul Farrelly: Mr Rawlings, you are on the Steering Committee for the Pub is the Hub.

Dr Rawlings: I am.

Q212 Paul Farrelly: My local pub in my village, the Gresley Arms, has just closed again. I will not pretend that it is just the bureaucracity of applying for Temporary Event Notices or the difficulties in getting music that caused the problem—it was probably the management of Punch Taverns—but the landlord and landlady did complain that it was so bureaucratic for them as a very small business to the landlord and landlady did complain that it was probably the management of Punch Taverns—but the landlord and landlady did complain that it was so bureaucratic for them as a very small business to actually stage these events; and bands quite often do not come cheap these days, if it is a decent band, and so it just adds to the general decline of both music and the difficulties of running country pubs in particular.

Dr Rawlings: That is true. In the fees they have to pay live music fees and that is another cost to small venues, but the Licensing Act unfortunately does not help with that. I think we could make the whole process easier. The Live Music Forum actually came to the conclusion as to why should music be licensed at all and I do not disagree with that actually; in essence, live music cannot possibly be said to be something that is bad and evil. We have accepted that we need to sell alcohol under licence—it has some bad effects, does it not? The only reason for regulating live music at all is in terms of the crowd control that you might have to have; but if you already have a licence that will cover that—and most pubs do one way and the other—then why do you need specific permission to run a couple of guys playing a guitar?

Mr Bish: This all comes back to the framework that we were talking about before. The law should help people operate safely, properly and commercially successfully, providing services for customers within the framework of the law. If you bounce against the edge of the law then the Review process is available to consider it: either stamp on it or modify it or in some way bring it into line. The law should be on the outside of this, not all-pervasive within it.

Q213 Paul Farrelly: So would it be fair to say that this would be an important caveat to your all-embracing welcome of the new licensing laws that almost had us moving on to the next witnesses right at the beginning?

Mr Bish: Yes.

Dr Rawlings: Yes it is, but let us regulate those things that you need to regulate. You have the crime and disorder, you have public nuisance, all those objectives under the licence. Let people do things and if they offend against those objectives then you take the appropriate action. Inherently live music, I certainly believe, is a good thing.

Q214 Paul Farrelly: A final question to end on that theme. Of course live music can be noisy but people can be on notice that they risk using their licence if they do not run a non-rowdy establishment. In all your experience is live music actually a major public order or disorder issue?

Dr Rawlings: No, certainly not.

Mr Bish: You have to be talking in terms of Glastonbury and when with the police it is a major strategic issue and a cost issue and so on; but in pubs, no, not at all.

Q215 Chairman: Before we return to consider music a bit further with our next witnesses, can I just turn to the question of costs and fees? The Government said in passing the Act that it would lead to a substantial reduction in the cost to those applying for licences. But we have had evidence in our last session that certainly for some groups the costs have escalated considerably, not just in terms of the costs for having to pay for the application but all the associated costs with advertising and legal advice, etcetera. What is your general impression of the effect of the Act in this area?

Dr Rawlings: I will kick off with that one, if I may? We did go through the exercise with the Department on simplification about 18 months ago. There are two things wrong with their figures, if you like. The first is that when they wrote the original paper for the Licensing Act they put in figures there that were never revised, promising savings of something like £4 billion over 10 years. In the process of the Bill, as
things happened the fees go up, the requirements go up and an awful lot of that potential saving was wiped out in that process. I think we all envisaged an application probably costing a couple of hundred pounds, and in our figures which were published to the Elton Report our average cost was £1,860 for an application, and that is much the same price as it is now to vary that licence. It is things like the advertising requirement that came in to the left side right at the last minute to put an advert in the paper. In fact the local authorities were the ones that wanted to get rid of paper advertising and put up an A3 notice on the building, but that was swapped for an A4 notice and advertising in the paper. So there was a whole series of things there that added to costs and fees going up. So I would say that overall it has actually cost the industry more money than it has saved, without a doubt.

Mr Hayward: I would add to that. The Elton Report, we put in figures if there were costs looking forward—and this is one of the things the Committee wants to do—and we are looking at things that might reduce costs and burdens not only on ourselves but other people. There is the requirement of the Triennial Review, which all local authorities have to undertake, which is you can review the licensing policy as a local authority at any point, but it has always seemed very odd that you should then have an obligation to do it every three years as well. In fact about two-thirds of all the councils have actually opted just to restate what they already had, and I think that is an unnecessary element. One of the other big benefits for both councils and ourselves would be that in the legislation it requires that you put in a set number of copies to a set number of different consultees and they all have to be hard copies, including plans. In the case of Wandsworth, when they were giving evidence to the Elton Report they said they shredded seven of the eight. If it were possibly to put those in online—the technology is there—and the Licensing Committee would decide who the relevant consultees were then they could just fire them through by email and that would be an enormous saving to all parties and I would certainly ask for that as an operation.

Dr Rawlings: Just to add to that. In the Elton Report we offered them a three-page application form as opposed to 28 pages and the Elton Committee said that that was a jolly good idea but it has not been pursued yet. It is terribly long. Just to add to what Rob was saying about the Triennial Review, we replied to over 300 of those and it is an enormous exercise in itself. The amount of work that councils themselves have to put into it is a huge cost; but the real flaw in the process, as Rob says, is that most of them only just reproduce policy and say, “What do you think?” So you do not get a chance to come back if somebody says, “I think this” or “I think that”, they just change the policy. So as a consultation process itself it is pretty well flawed. I think it would be much better for councils and others to say, “We think something is going wrong”, or whatever, “We want to change the policy; we consult and we do it properly” and then everybody is happy. The process at the moment really does not work at all and it is expensive.

Mr Bish: In our submission, we suggested to put a number on it, doing the three things of a common licence fee payment date, rather than just on the anniversary of original grant; the common single portal and electronic submissions; and getting rid of this compulsory newspaper advertising which would save something in the order of £20 million to £25 million across the industry. Of course there are lots and lots and lots of hidden costs. We were talking earlier about music and so on but the moment you have hired the lawyers to fight your way through the ramifications of this, that and the other application, suddenly the fees go up, or it does not get done, and it is such a pity.

Mr McNamara: The thing that I would add in terms of our members, many of whom are operating in small community pubs in towns and villages across the country, that that increase of £30 for a three-year licence—and granted they do not have the complexity of going back to court every three years now, that has gone, so there are some time savings and work savings—their costs have increased considerably. So small community assets are paying far far more just to maintain a licence and do what they have done in many cases for hundreds of years, you know, safely and sensibly and that is something that certainly my membership would ask to be reflected on. Is there an opportunity here to reflect on those smaller premises with that increased burden?

Q216 Helen Southworth: Can I explore your views on density of licensed premises? This is specifically an issue for town centres and city centres, but what are your views on using capacity within an area or density within an area as a guideline in terms of licence applications?

Mr Hayward: I think it is worthwhile looking at where the concentrations came from and some of the evidence you heard from the police. Originally venues were scattered all around a town or city such as your own, and then it was decided that in fact it would be a good idea in policing terms to have them all together, and therefore there was active encouragement through the 1980s and the 1990s that they should all be in one place. What we have tended to see as a result of the Licensing Act is that the number of nightclubs is diminishing—they have been hit quite hard—and certainly when Simon O’Brien and his police colleagues were giving evidence they were talking about now having to police on a dispersed basis because people were not necessarily coming into town centres as often as they were previously. If you can stay in a pub until midnight rather than until 11 are you then going to get a cab in, pay an entrance fee, have possibly two pints and then pay a cab home? As I say, all the information shows that there has generally been a decline. I have commented about the history behind it and the changes that we are seeing as a result of the Licensing Act; I think one has to judge what is the best for each particular town and city in terms of the way they want to operate it. You have Manchester,
Mr Rob Hayward, Dr Martin Rawlings, Mr John McNamara and Mr Nick Bish

11 November 2008

for example, and Leeds where they actually encourage their big city centre operations. I have heard you on other occasions express concern about the concentration you have in Warrington, and I am not an expert on Warrington but I think it needs to be a judgment between the industry, the police and the local authority.

Dr Rawlings: The mechanism that is currently advocated through the guidance is through cumulative effect, which has been used by a number of places, which is not an absolute measure of saying that there are so many pubs per head, or so forth; but says that this has reached a point where it is difficult to manage and therefore we need to look carefully at new premises. That has been adopted by quite a lot of places around the country and as far as we are aware it does work, but it is quite difficult to actually control the demand side of the equation.

Q217 Helen Southworth: One of the messages I get from part of the industry is that you can reach a stage where the density is such that it is very, very difficult indeed to make a profit and there are issues there around whether or not you can actually sustain the industry.

Mr Bish: I would think that market forces will find their own level and people who start to operate or are operating in a particular way will find that they can either succeed by doing a better job or they will fail. I think the earlier remarks about the local authority and the police are more what we would be expecting to answer in the context of the Licensing Act, the rest is a commercial decision. If you choose to open another place then on your own head be it. We would hope it is not the place of the Act to control the demand side of the equation.

Q218 Helen Southworth: I was not expecting the Act to; I was just expecting you to comment on your opinion of how it works.

Mr Bish: That is our comment. We represent businessmen who we hope know their job.

Q219 Adam Price: Is the process of applying for a licence less cumbersome? Is there less red tape involved than previously?

Mr Rawlings: No. It is much more cumbersome, but the advantage is you only have to do it once. Under the old system you had to go back and get a new licence essentially every three years, you went to a court and you had to stand up in front of a magistrate and so forth. Providing you get your application done right then in that sense it is less onerous but, as we were saying earlier, you have to make eight copies and you really have to do that recorded delivery because we have heard numerous people say “I didn’t get that” and if one authority did not get it then the whole thing falls. Certainly a one-shop delivery would be a great improvement and an electronic one even better.

Mr Bish: The point Martin is making is that this is about a Premises Licence. It is worth reminding ourselves all the time that the Personal Licence, the equivalent of the driving licence that now exists, is issued to responsible people whose livelihoods can be taken away if they offend against the law and their licence. I would say to anyone anywhere that licensed premises are the best places to drink.

Q220 Adam Price: Are there any further changes you would like to introduce to the process? You mentioned something in your submission about the Interim Authority Notice.

Mr Rawlings: When the premises licence holder dies the business is actually not able to operate without that licence and so you need to change that over. The Act only allows seven days and, to be fair, most people are hardly buried within seven days. I have spoken long and hard with the minister about whether this should be made 14 or 21 on compassionate grounds, but the argument was that they had given enough away already so we are staying with seven days. We have had cases of real distress and they are small businesses, Welsh-based particularly, where the licensee died and the business had to shut. The last thing you need when you are burying your beloved is to have your income taken away. It is a simple measure and it only takes the stroke of a pen to change it. I would settle for 14 but 21 would be nice and compassionate.

Q221 Adam Price: The Government is bringing forward some Legislative Reform Orders to introduce some minor changes in the process. Have you had sight of those?

Mr Rawlings: Yes, I have and it is not there and I keep asking for it.

Chairman: We have no more questions. May I thank you all very much.

Memorandum submitted by the Musician’s Union (MU)

1. The Musicians’ Union (MU) welcomes the opportunity to give evidence to this Select Committee inquiry on the Licensing Act 2003.

2. The MU’s interest in this inquiry comes as a result of our desire to promote live music in the UK. The MU represents over 32,600 members who work as full or part-time professional musicians, and live music performance represents a major source of employment for our members. Most musicians start by playing in smaller venues in the early stages of their careers, and the MU is therefore committed to promoting opportunities for live performance in small venues in order to protect the career progression of musicians in the UK.

3. We also believe that live music performance is an essential aspect of culture in the UK and that it should be promoted in its own right for its contribution to cultural enrichment.
4. The MU was closely involved in the Licensing Act 2003 both during its progression through the parliamentary process, and during and after its implementation. Our original position was that live music should not be part of such a licensing regime. However, since the Bill’s introduction, we have sought to co-operate with the Department for Culture, Media and Sport (DCMS) in order to oversee the implementation of the Act in the interests of MU members.

5. Our response to this inquiry touches on a number of the questions posed by the Committee, but focuses on the areas that may directly affect the professional activities of our members.

Whether there has been any change in levels of public nuisance, number of night-time offences or perceptions of public safety since the Act came into force

6. Although the MU is not in a position to comment on how the Licensing Act has impacted on levels of public nuisance across the board, we have made our own investigations into whether live music specifically has an effect on public nuisance.

7. These investigations took place as a result of comments made by Chris Fox, the President of the Association of Chief Police Officers, in July 2003 in which he claimed that live music performance has a negative impact on crime and disorder; “live music always acts as a magnet in whatever community it is being played. It brings people from outside that community and others who come and having no connection locally behave in a way that is inappropriate, criminal and disorderly”.

8. The MU was concerned about the comments made by Chris Fox, and as a result we wrote to chiefs of police across the country to ask whether they considered live music to be linked to an increase in crime and disorder. The vast majority of the responses that we received supported our view—that the performance of live music itself has no effect on crime and disorder, and that any problems experienced are usually due to the size of the crowd (at festivals, for example) and the dispersal of people at the end of an event.

9. These letters support the MU’s argument that smaller live music performances have no adverse effect on the promotion of any of the licensing objectives. We would be happy to provide copies of the letters that we received from chiefs of police if required.

10. The second commonly held perception about live music performance is that it impacts on public nuisance by way of noise. The research that DCMS commissioned through the Live Music Forum, carried out by Mori, reported that 77% of all objections to applications for live music came from local residents or their representatives, with 68% of those objections specifically relating to concerns about the noise level of music; or noise levels from customers.

11. However, the Live Music Forum’s investigations into actual noise complaints made showed that an estimated 90% of complaints relate to music from a domestic premise. The MU is therefore concerned that the commonly held perception that a live music performance may impact on the public nuisance objective is not actually borne out in reality.

12. We would therefore suggest that, where live music performance is concerned, the Licensing Act 2003 is likely to have had little impact on the public nuisance objective (both in terms of levels of crime and disorder and noise disturbance) because live music had little effect on levels of public nuisance in the first place.

13. One of the main faults of the Act is that it attempts to hand decision making to local communities through their locally elected representatives. It was also intended to be proactive so that problems could be anticipated and remedied prior to Premises Licences being awarded to venues. These are laudable aims but it has been demonstrated that both aims have inherent weaknesses. Whilst a majority of Licensing Committees have adopted a professional and sensitive attitude to requests to promote live music, a significant number have paid too much attention to the views of a vocal minority. In fact we have seen situations that can only be described as “the tyranny of the minority”—the restrictions imposed by Camden Council on the open-air concerts at Kenwood are a perfect example. In other cases restrictions have been imposed because one or two residents have lodged objections to an application from a venue to include live music in its Premises Licence. Unfortunately residents are encouraged to object to, but not encouraged to voice support for, applications to promote live music. We believe that the legislation should be reactive not proactive and restrictions should only be imposed if it is proved that the provision of live music in some way conflicts with the four main aims of the Act. Licensing Committees should always give live music the benefit of the doubt.

14. The work of the Live Music Forum has demonstrated that there remain a small number of local Government authorities that have applied unreasonable and disproportionate conditions on premises licenses in respect of live music. These authorities appear to be ignoring the Guidance to the Act and we call upon the Government to take appropriate action to ensure that the provisions of the Act and Guidance are fully adhered to and to censure any local authority that flouts them.

15. In situations where residents, in new dwellings that have been built next to existing established live music venues, have complained of noise, the “agent of change” should ensure that the venue is in compliance with any conditions that might be put in the Premises Licence, and should also finance any changes. In most cases the “agent of change” will be the developer/builder.
Ev 90  Culture, Media and Sport Committee: Evidence

The impact of the Act on the performance of live music

16. The MU was initially concerned that the inclusion of live music performance within the Licensing Act 2003 would result in a significant reduction in the number of venues prepared to put on live music. We therefore conducted a survey of MU members in the summer of 2006 with the intention of gathering information regarding venues that may have closed, or indeed opened, due to the Act.

17. As part of this exercise 60 members, who indicated in the survey that they were happy to be contacted by the Union, and who had reported venues that had ceased the provision of live music due to the Act, were contacted and asked for further details of these venues.

18. In the survey returns these MU members had claimed that 144 venues had stopped putting on live music. As a result of the direct interviews conducted by the Union’s Officials this figure dropped to 80. Of these 80 venues, the ones that the Union was able to contact gave reasons for no longer putting on live music as follows:

<table>
<thead>
<tr>
<th>Reason</th>
<th>Number</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Still promoting music or will be in future</td>
<td>33</td>
<td>42%</td>
</tr>
<tr>
<td>Economic Factors</td>
<td>14</td>
<td>18%</td>
</tr>
<tr>
<td>Licensing Issues</td>
<td>9</td>
<td>11%</td>
</tr>
<tr>
<td>Change in policy by venue</td>
<td>8</td>
<td>9%</td>
</tr>
<tr>
<td>Problems identifying/contacting venue</td>
<td>4</td>
<td>5%</td>
</tr>
<tr>
<td>Venue closed</td>
<td>7</td>
<td>9%</td>
</tr>
<tr>
<td>Noise</td>
<td>2</td>
<td>3%</td>
</tr>
<tr>
<td>Have never put on live music or have not done for some time</td>
<td>2</td>
<td>3%</td>
</tr>
<tr>
<td>No reason given</td>
<td>1</td>
<td>1%</td>
</tr>
</tbody>
</table>

19. The results of both the 2006 MU survey and the DCMS MORI survey give an overall balance between venues opening and closing in the period after the introduction of the Act. However, the results demonstrated by the above table shows that the largest percentage of venues reported to the MU—33 of the 80 (42%) are still promoting music or intend to in the future. Nine of the 79 (11%) stopped providing live music because of licensing issues. Further research with these nine venues, revealed that one was an unlicensed folk festival and two were restaurants who wished to put on a one-off live music event. This resulted in the figure being reduced to six venues or 7.5%.

20. The survey demonstrates that even when the Union’s 32,600+ members were given free reign to “name and shame” venues that had been affected by the Act, only six genuine cases involving previously established music venues were uncovered.

21. While the evidence indicates that the Licensing Act has had little effect on the provision of live music, the MORI research of 2006, commissioned by the Live Music Forum in order to examine the position of smaller venues, indicates that a significant number of licensees who previously put on live music without a PEL (usually under the two-in-a-bar exemption) no longer want live music in their establishment. This reinforces the perception of the MU that there has been a slight reduction in the number of smaller venues offering live music. Therefore it would appear that such venues need particular encouragement to promote live music events.

22. As the Licensing Bill progressed through parliament the Union lobbied for an exemption, for venues with a capacity of 200 people or less, from having to include regulated entertainment in their Premises Licence application. It is highly unlikely and very improbable that the performance of live music in these small venues will conflict with, or undermine, any of the main licensing objectives of the Act (as we explain in paragraph 8).

23. The DCMS response to the Live Music Forum’s “Findings and Recommendations” report in July 2007 included a reference to a potential exemption for small venues:

We accept the spirit of these recommendations and will explore options for allowing certain low risk live music performances to be exempt from licensing requirements, in addition to the existing exemption for incidental music. This is unlikely to result in a blanket exemption, but we will look at finding a meaningful way to exempt those events that are self evidently of low risk to the licensing objectives. This is likely to be pursued through the de minimis exemption route on which we plan to consult next year, but we will also explore other options

24. The DCMS went on to publish the results of research commissioned from The British Market Research Bureau (BMRB) in October 2007. This survey demonstrated that, since 2004, there had been a 5% decrease in the provision of live music in what the researchers termed “secondary music venues”; ie when music is offered as an addition to the main business of the premises. This decrease is largely explained by a fall-off in live music, in restaurants, cafes, church halls and community centres. Live music in other types of venues appears to have been broadly stable, with the exception of “clubs”, where live music provision has increased.

25. The findings of this research echo the concerns that the Musicians’ Union has expressed on a number of occasions—namely that the Licensing Act would cause a reduction in the provision of live music in smaller venues. The research therefore adds more weight to the argument that a \textit{de minimis} exemption for small venues is needed, which would encourage the owners and managers of restaurants, wine bars, cafes and so on to put on live music.

26. We are currently in discussions with the DCMS over a possible exemption to the Licensing Act for small venues wishing to put on live music and we are hopeful that a positive outcome can be achieved.

27. In addition to an exemption for small venues, the MU believes that the Government should consider tangible benefits in the form of tax breaks etc for venues that show a clear commitment to the provision of live music, for example those who put on 50 or more gigs a year.

\textbf{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}

28. The MU has received anecdotal evidence from venues, especially restaurants, to suggest that they have stopped putting on live music due to the bureaucracy involved in applying for a licence. We therefore believe that there is a strong case for simplifying the definition of Incidental Music. Venue owners are often unsure of what would pass as Incidental Music and so they are put off from applying for licences that would in all likelihood be granted.

29. The MU welcomes the Government’s recent consultation aimed at introducing a simplified process for minor variations to premises licences and club premises certificates and to remove the requirement for a designated premises supervisor and personal licence at community premises. We believe that any efforts to simplify the application process and the bureaucracy involved are to be applauded, as they are likely to encourage more venues to put on live music.

30. However, we strongly believe that the Government will need to promote this fast track system once it is in place. During the run-up to the implementation of the Act many Licensees added self-imposed conditions to their licence applications in the mistaken belief that Licensing Committees would look more kindly on their applications. These self-imposed conditions include restrictions on the number of performers and limits on the length of performances. Experience with the new licensing process has shown that these licensees would have been better to seek more open-ended and less restrictive licences, as, in the vast majority of cases, it appears that such applications would have been accepted. The Government should therefore encourage licensees to examine the conditions in their licence and seek variations where appropriate.

\section*{Conclusion}

31. One of the aims of the Licensing Act 2003 was to increase the number of live music performances. In the MU’s opinion, it has been unsuccessful in this aim. Live music has prospered over the last five years, but we believe that this merely reflects the increasing popularity of live music and that it has occurred despite the Act, rather than because of it.

32. We remain of the opinion that the inclusion of regulated entertainment in the Licensing Act 2003 is not necessary and that its inclusion has greatly increased bureaucracy for very little benefit to the licensing objectives.

33. However, we are committed to working with the Government to ensure that the Act meets the interests of our members as best as possible until an opportunity to review the inclusion of live music in the Act presents itself. We welcome the Government’s recent attempts to simplify the application process and their discussions with the MU over an exemption for small venues, and we are hopeful that progress can be made on these fronts.

34. We would also like to urge the Select Committee and the Government to seriously consider some of the additional recommendations made by the MU in this paper. Without them, the Licensing Act 2003 is unlikely to deliver the Government’s promised improvements to the live music scene in England and Wales.

\textit{September 2008}
Memorandum submitted by Equity

INTRODUCTION

1. Equity is the trade union representing 37,000 actors, performers and other creative professionals working in the UK. This includes many thousands of individuals who work in forms of live entertainment covered by the Licensing Act 2003, such as singers, variety artists, circus performers and performers in theatres.

2. For this reason we have followed the development and implementation of the Act very closely. Equity was one of the key stakeholders that provided input to Government before and during the parliamentary process. We have also worked with the Department of Culture, Media and Sport as well as Arts Council England, local authorities and industry bodies on appropriate licensing rules and guidance.

3. We welcome this timely examination of the Act. This response does not address all of the issues that are the subject of the Committee’s inquiry, but will focus of the key areas of interest for Equity members and their experience of the current regime.

BACKGROUND

4. The terms of reference for this inquiry refer to the impact of the Act on the performance of live music. However it is important to remember that this legislation refers to all forms of “regulated entertainment”. While this certainly includes live music, it is also crucially important to remember that this definition covers everything from theatre and circus performances, to the street performances and Punch and Judy shows.

5. Consequently, in order to reflect the range of entertainment affected by the Act, this response suggests that the inquiry should be able to consider the impact on regulated entertainment more broadly. Indeed this response will seek to address these points.

6. As the Committee will be aware, the Licensing Act 2003 replaced nine former licensing regimes in order to regulate the sale and supply of alcohol, the provision of entertainment and the sale of late night refreshments. This included the end of the Public Entertainment Licence (PEL), with the introduction of a Premises Licence, with one licence now covering all permissions required by licensed premises. It also allowed an establishment to acquire up to 12 Temporary Event Notices (TENS) per year.

7. The Act also abolished the two performer exemption (the two-in-a-bar rule); repealed the need for renewal (the licence is in place for the lifetime of the establishment); centralised the fee structure and ensured that all regulated entertainment was a licensable activity. Potential licensees no longer had to apply to the local magistrates as licensing became the responsibility of the licensing authority. However, these authorities are obliged to consult “interested parties”, including people living in the area, other businesses and appropriate trade associations.

8. There is also an “incidental music” exemption included in the Act, which is explained in the Statutory Guidance to the Act issued by the Secretary of State. However the extent and manner in which this has been applied is unclear to performers.

9. All of these changes were required to be consistent with the Government’s four licensing objectives.

— the prevention of crime and disorder;
— public safety;
— the prevention of public nuisance; and
— the protection of children from harm.

IMPACT OF THESE CHANGES

10. There has been a range of research that has sought to assess the impact of the Licensing Act on music and live entertainment. These include research commissioned by DCMS, the work of the Live Music Forum and feedback sought by the Musicians’ Union. Equity has also engaged in extensive consultation with its members, and has recently launched a further survey of venues and performers, in order to assess the impact of licensing and other factors on the availability of live entertainment.

11. So far this research has been largely inconclusive and overall it appears to suggest that the impact of the Act has been broadly neutral. There has been no explosion of live entertainment as predicted by optimistic Ministers and officials. Equally it has not been the disaster for the future of live music and entertainment that some had expected.

Nevertheless, it does appear that small venues appear less likely to put on entertainment and a range of factors mean that many of the traditional live entertainment venues are finding it difficult to survive. Recent research by PricewaterhouseCoopers estimates that 1,200 pubs closed last year, with a further 2,000 expected to close this year.

This cannot (and has not) been attributed to a single factor, such as licensing. It is more likely a combination of the economic downturn, the smoking ban, rising drink prices and in some cases a change in the culture of live entertainment. However, Equity is aware of cases where the cost and bureaucracy involved in licensing is being cited. Equity will be happy to provide the Committee with findings of its research into these matters when this is available later in the year.

Key Problems Encountered

Equity maintains that it was unfortunate that the licensing regime for entertainment was consolidated into the 2003 Act, along with the rules covering the sales and supply of alcohol and the sale of late night refreshment.

We believe that this approach was unhelpful because many of the local authorities who were required to implement the Act were understandably focussed on the impact of these changes on late-night drinking and potential public order problems. In a sense local authorities were encouraged to approach the Act in this way, due to the four “licensing objectives” laid down by the Government, as outlined above.

These are undoubtedly important objectives, but on the whole they are not problems that occur in the provision of entertainment. They are much more closely related to the sort of public order issues associated with the supply of alcohol.

However, as a result of the introduction of the Licensing Act many Equity members have found that local authorities have begun to associate the provision of entertainment with possible public order problems, despite the fact that there is no evidence to support any such link. Yet as a consequence we are aware of significant anecdotal evidence of cases where applications for a licence to put on regulated entertainment have been refused, due to public order concerns.

Equity members find this link confusing and illogical. Moreover there were already robust health and safety regulations in place at venues prior to the Act and the police already had power to summarily close disorderly premises. From the point of view of live entertainment this objective is largely irrelevant.

The Licensing Act has also caused problems for some specific groups of our members who do not work at a single premises or site, but are engaged in travelling entertainment. This includes some of our most traditional kinds of entertainment, which the Act was not originally intended to cover, such as circuses, outdoor theatre and Punch and Judy shows. These shows are able to reach communities that may otherwise be limited in the extent of live performance available.

Prior to the introduction of the Licensing Act these types of travelling entertainment did not require a licence. Indeed at the start of the process to review the licensing laws, it appeared that this would remain the situation. It was only very late in the process that it became clear that they would be subject to the new rules covering “regulated entertainment”.

Consequently circuses now have to get a separate licence for every single new site they go to—which can be as many as 40 each season. They also have problems if a site becomes unavailable at the last minute, as alternative sites will not ordinarily have a licence and it takes at least a further 28 days to arrange one.

We are aware of a number of examples of problems of circuses being booked to play at licensed sites, but being forced instead to close completely for a period due to wet weather, rather than using an alternative venue. This affects large circuses as well as smaller ones; among a number of examples, Zippo’s Circus has been turned away from sites for this reason and been unable to rearrange a last minute alternative as it would have done in the past.

Proposed Solutions

Equity welcomes the recent proposal by DCMS to enable venues to make small changes to licences through a new “minor variation” application process. This has the potential to make it easier for those establishments with a Premises Licence to simply add licensable activities, such as live music or other kinds of performance. This technical measure should assist in reducing bureaucracy and encouraging entertainment.

We also believe that there should be a review to consider the impact of licensing on the sort of travelling entertainment that never previously required a licence (such as street performance and circus). This should explore the possibility of an exemption for entertainment of this type, or at least explore simpler ways of licensing entertainment that does not take place within a fixed premises. This may include consideration of allowing travelling entertainment to operate under an annual licence, providing them with greater freedom to perform on a basis agreed with local authorities.
25. The research that has been done and the evidence that is available also means that there is a case for an exemption for venues with small capacity, which could be considered to be low-risk. Following on from the research carried out by MORI and the Live Music Forum we strongly believe that there is a clear case for such an exemption to be introduced for such “micro-venues”.

26. This would need to be backed up with a more uniform approach to enforcement, which will help performers and venues have a clearer idea of where they stand. We welcome the Government’s recent indication that it is considering such an amendment and Equity would hope to be consulted by the DCMS as it seeks to take this matter forward with interested parties.

CONCLUSION

27. Equity is pleased to have the opportunity to contribute to this inquiry and hopes that the Committee will consider the points made—particularly in relation to the reported impact of the changes in licensing on small venues; the spurious link between entertainment and public order problems; and the impact of licensing on forms of travelling entertainment.

28. We would also hope that the Committee would lend its support to measures aimed at reducing bureaucracy and consider carefully the case for reclassifying small venues. These changes would help to improve the licensing regime, so it made more sense for the world of entertainment.

29. We would welcome the opportunity to provide further evidence to the Select Committee on this issue. As the representative organisation of actors, singers, comedians, and other creative contributors we believe that we could provide a valuable perspective on the inquiry.

September 2008

Witnesses: Mr Feargal Sharkey, Chairman, Live Music Forum, Mr John Smith, General Secretary, Musicians’ Union, and Mr Stephen Spence, Assistant General Secretary (Live Performance), Equity, gave evidence.

Chairman: We are now going to focus on the specific issue of live performances. May I welcome the Chief Executive of UK Music, the legendary Feargal Sharkey, the General Secretary of the Musicians’ Union, the nearly legendary John Smith, and the Assistant General Secretary of Equity, Stephen Spence.

Q222 Mr Sanders: I think John Smith is more legendary as a brewer! Firstly, Feargal, congratulations on your new appointment.

Mr Sharkey: Thank you so much.

Q223 Mr Sanders: In general would you say that live music is in good health? Has the Licensing Act had either a positive or a negative impact?

Mr Sharkey: I think we would all share the goal and the aspiration that what we need to achieve is a very vibrant, very diverse and very lively live music scene. It is, as the Live Music Forum indicated at the time, older than the written word and for the millennium has been the very means that we have used as humanity to translate and pass on views, aspirations and indeed, on occasion, political comment from one generation to the next. The broader issue of the live music industry is clearly a component of the music industry. It is one of the more successful creative industries in the UK. It currently contributes in the region of £6 billion a year to this country. We are, in terms of exporters, the second largest exporter of music in the world; it is £1.3 billion a year, second only to North America. We punch considerably above our weight on the international stage. We employ about 130,000 people. The remarkable thing is that that fantastically successful British industry is ultimately built upon very small, very fragile and very humble foundations and that is little rooms in the backs of pubs, clubs, hotels, bars and restaurants. They are incredibly important for a number of reasons. They provide a major outlet for very specialised, non-mainstream forms of live music, for example, things like folk, jazz, rhythm and blues. It also provides a fundamental regular source of income for an awful lot of musicians, and perhaps the majority of John’s members play in village pubs. Certainly from my own personal experience, it is the first and only opportunity that young musicians, performers and singers have to begin to appear in public and develop their talent, their craft and their ability and without those little rooms there would be no £6 billion a year industry. Clearly it was an objective stated by government that one of the ambitions of the Act was to see an increase in live music. It has grown considerably over the last few years. I believe Mintel has recently indicated that the volume of ticket sales in the UK in the last 12 months has now reached £1.7 billion, which is quite extraordinary. It is true that the upper and middle end of the market has grown but, as you have already heard from the licensed trade themselves, we have some issues surrounding smaller venues where we do not think that level of growth is continuing and that is confirmed by some research commissioned jointly by the Forum and DCMS which indicated that at that time, a year and a half ago, there had been a decrease of 5% in live music taking place on those smaller premises. We would have the concern at this moment that that descent is accelerating and the impact of that is increasing. What I think in terms of UK Music—and I would hope that Stephen and John would agree—is that we are very focused on the idea of good
regulation and we are very content and happy with intervention when it is reasonable, necessary and appropriate. There are specific issues we have relating particularly to smaller premises where we do not feel this legislation is fit for purpose. We will hope, with your agreement, want to discuss TENs, incidental music and some concerns involving travelling entertainers. We do have some comments to make and some suggestions which we think you might find helpful as to how we might be able to work with government and solve some of the concerns we have. There is one particular issue that we have been uncovering in recent weeks that is new to all of us, that is bound up in this legislation and that I have to say is causing a great deal of concern within the industry, but I will return to that a little later. Overall, I would like to emphasise—I think we all are in agreement—that we are very happy, keen and eager to work with government to overcome some of the issues we have, but we are becomingly increasingly persuaded by a viewpoint expressed by the Musicians’ Union, which is that there are some fundamental principles and some philosophical ideals surrounding this legislation. Quite clearly the focus of attention is alcohol, crime and disorder and that is not an unreasonable thing, it is obviously something that needs to be addressed on a national scale. We think it is ultimately long term an inappropriate mechanism and place for which to be making any form of judgement or comparison regarding live music, and again we would like to discuss the issue of crime and disorder at length with you in a few moments. Long term we feel that ultimately the only real solution will be to repeal live music from the Licensing Act and to have a standalone bit of legislation more suitable, more sympathetic, more reasonable and more proportionate to the impact that we believe live music has on local communities.

Q224 Mr Sanders: From what you have said it is possible to have growth in live music from the middle and upper end and actually a decrease in venues for the first-time performers. Would you say that live music is in good health?

Mr Sharkey: Live music is in very good health, but whether or not the Government’s aspiration was that that was as a direct result of the Licensing Act, I am not sure we would necessarily share that viewpoint. Particularly at the top end of the scale, as I am sure some of you are aware, there has been extraordinary growth in large outdoor, large-scale festivals particularly over the last four or five years. That is predominantly making up the advances that were shown by Mintel in their research indicating the volume of ticket sales now. We are quite clearly of the opinion that it has become increasingly burdensome and increasingly difficult for small-scale premises, particularly those whose main activity is not providing live music, ie bars, restaurants, that kind of thing. As you have become aware, for example, were you to choose to add live music as an addition to your licence, it is a requirement of the Act that you have to repeat the full application process, even to have two musicians standing in your restaurant on a Friday night. The cost that I have been given by the British Pub and Beer Association is that that in itself would cost in the order of £1,500 to £1,600. Obviously for a small business whose main interest is not the provision of live music it becomes a question of simple economics as to whether or not it is a viable proposition. We currently believe there are many places that are simply not providing music because of the bureaucracy and the investment that they have to make to do that.

Mr Smith: I agree with that. We were quite pleased when the DCMS research correlated with our figures that the small venues had fallen off by 5%. We are not advocating a return to public entertainment licences at all when we talk about different regulation, but we did not have any figures on how many venues benefited from that two performer exception, the 2-in-a-bar rule, we had to do a survey of our members to try and find out who worked under that and where they were working now or just after the Act had been introduced and it showed straightaway that the Act had a neutral effect across what we call traditional music venues. It did create a lot more bureaucracy but, as Martin Rawlings said in the previous session, it is a one-off form filling exercise and that benefited those larger venues. We did talk at the Live Music Forum—before the Green Paper stage—about how the Act discouraged the smaller venues from adding on live music as they had to say what genre of music it would be, they had to talk about the number of performers they wanted and this was restricted if you are running a wine bar or a restaurant. A lot of them said “I can’t be bothered” and then they came to us because we said that we would help them and they said, “We have made a mistake here. We missed it. The public that come in for their pizza or whatever want to have the two guitars, the piano and singer. What do we do?” Again as Martin Rawlings said, they have to go through the whole process again and this is completely self-defeating. This is something that we did talk to government about and we did try to get amended. I think we need to get a fast-track variation of the licence to encourage the use of live music particularly in those smaller venues.

Q225 Chairman: Poor Stephen Spence has been sitting there. Do you have anything to add going slightly beyond the musical performance into other kinds of live performances?

Mr Spence: Obviously when you are performing with legends you are playing the role of the supporter! The role of Equity obviously is broader than just musicians but, also, the Act is broader than live music. Whilst sharing the comments that were made about small venues, I would also say that some of the areas of travelling entertainment in particular have had difficulties with the Act, as you probably heard from circus proprietors, but Punch and Judy professors have fed back to us their concerns about having to deal with the time, for one example, were you to choose to add live music as an addition to your licence, it is a requirement of the Act that you have to repeat the full application process, even to have two musicians standing in your...
been successful. John will indicate some views on that a little later, but in regard to circuses there is a problem and the problem is illustrated by the story that came up in September, which you may have come across, where Zippo’s Circus in Birmingham, having been approved to perform, ended up having their clowns unable to play trumpets because there was a last minute change of mind and they went through their routine in silence. They were not even able to have their backing track. That is an article through their routine in silence. They were not even able to have their backing track. That is an article about the events that came up in September, which you may have come across, where Zippo’s Circus in Birmingham, having been approved to perform, ended up having their clowns unable to play trumpets because there was a last minute change of mind and they went through their routine in silence. They were not even able to have their backing track.

Q227 Paul Farrelly: Who can we pin the blame on then?

Mr Smith: Lord McIntosh made a statement in the House of Lords and quoted from the Association of Chief Police Officers and that is something that really stung us. He said, “Live music always acts as a magnet in whatever community it is being played. It brings people from outside that community and having no connection locally behave in a way that is inappropriate, criminal and disorderly.” I thought, “Hang on a minute. That’s not the music scene that I know.” We lobbied quite hard on an exemption for small venues and we said looking at what could replace it. We lobbied quite hard on an exemption for small venues and we said looking at what could replace it. We lobbied quite hard on an exemption for small venues and we said looking at what could replace it.

Mr Smith: We tried to monitor that through our local authorities will say either we will issue you with a notice or we will not issue you with a notice because we do not think you need one, only then to change their mind and make it very difficult for circuses to proceed. Punch and Judy professors and other small variety acts having to get these constant Temporary Event Notices because they perform at so many different facilities find that very difficult. It is reassuring to us to see in the DCMS submission that they are proposing to consult on the idea of a single transferable licence for travelling forms of licensable activity and we would very strongly support that. If a circus was able to apply for its licence, get its licence and have that licence in the same way as a premises has the licence on an ongoing basis, we think that would be enormously helpful.

Q228 Paul Farrelly: So we can conveniently pin the blame on a senior policeman, a Mr Fox?

Mr Smith: I think you are using a brush stroke to talk about everything. We know there might be disorder problems at Glastonbury, although the evidence seems to be that there is less—

Mr Sharkey: In my guise as then Chairman of the Live Music Forum I did discuss that particular letter and that particular issue at length with ACPO and, as was indicated in the Live Forum’s report, they did eventually retract it in that they eventually acknowledged that they had no evidence on which to substantiate the allegation that people who attend live music concerts behave in a way that is “criminal”.

Q229 Paul Farrelly: But the damage had been done by then.

Mr Sharkey: It had already been done. Ironically, in the midst of our work we did uncover some minutes just prior to the Licensing Act coming in for Glastonbury Festival’s licensing application, which is obviously a public meeting, and the then Chief Inspector for Avon and Somerset Constabulary explained to the Licensing Committee that he personally had done a comparative study between the Bath and North-East Somerset Council District, which apparently during the festival shares a similar population figure and that, as it transpired, shows that in sleepy, sedate, dignified Bath there was almost 20% more crime during the same period than there was at Glastonbury Festival. It is clearly an issue that is constantly an accusation and parallel that is going to be drawn but, as has clearly been indicated, no one seems to be able to provide anything by way of substantive evidence to support any connection in any way between crime and disorder and live music. Let me pick up what you said about the smaller venues. Yes, there are some similar comments that have been made regarding Temporary Event Notices, which I would ask the Committee perhaps to keep with them. I believe in the DCMS written submission they did indicate that last year there were over 100,000 Temporary Event
Notices issued by local authorities throughout England and Wales and indeed there was a comparable number issued during the last year of the Forum’s work, which was 2006. I think on average we are looking at somewhere in the region of 100,000 events taking place per year under the auspice of a Temporary Event Notice. Again, I am not aware nor have I ever seen any evidence to insinuate that the majority of them in any way contribute to crime and disorder or anything else. Some of the issues raised by Stephen with the clients, whilst they are entertaining, could quite clearly be covered by incidental music as the Act does exempt incidental music. However, the Act, rather unhelpfully, does not provide any definition for incidental music and it has been a topic of some conversation and leads again to some of the inconsistency in what we believe is a misapplication. Let me give you one fantastically positive example.

A couple of years ago the Corporation of London was approached by a resident charity with the ambition to hold a number of live music events in all of the public areas and all of the wards in St Bartholomew’s Hospital; I think it was 26 in total per week throughout the summer months. The Corporation of London decided that as the main activity of the hospital was obviously clinical care and this had been explained to them, the music was quite obviously incidental and therefore would not be licensable and everyone could carry on and have a good time. The Forum felt that that was a particularly pragmatic and insightful approach to be taken. At the other extreme, we are aware of a choir—and I hope they do not mind me saying this—of men seasonally approaching the end of the autumn of their lives down in the south-west who during the summer months go to the local fishing harbour and stand and sing a few songs and raise some money for the local charities. They were told by the local authority that they were not in a position to do that any longer as they would require a licence. I did speak to the chairman of that choir at great length and the rules that they had found to circumnavigate the interpretation of the local authority is that this summer on a Sunday afternoon they would take the local vicar with them to the harbour side and the local vicar would then bless the harbour, instantly transforming it into a place of religious worship, which, of course, is exempt from the legislation, and they could then sing a few songs and collect some money. The point we are making is that such is the challenge being felt by an awful lot of small venues, small premises and small voluntary groups. I would not for one second suggest that a choir made up of retired elderly gentlemen could in any way be considered a threat to public nuisance or crime and disorder, but that is exactly what has happened. I assume that that was not the ambition or intention of this legislation.

Q230 Rosemary McKenna: Feargal, can I just put on record the appreciation of the All Party Music Group for the sustained support that you give to us because we now have all sorts of live music in the House of Commons, which the authorities here resisted for a long time, which we very much appreciate.

Mr Sharkey: It was long overdue!

Q231 Rosemary McKenna: It sounds to me as if what we really need now is the Government to do some serious post-legislative scrutiny, which we have been talking about for some time. Pre-legislative scrutiny now takes place on a regular basis, but I do think that this a very good example of where our Committee will be recommending a very strong look at the legislation because there are all sorts of things that come in that we did not expect, that we did not see, even those of us that were very much involved in the discussion at the time. Can you tell us a bit more about what has been the experience of promoting live music and entertainment within the licensing framework that primarily related to the prevention of public nuisance?

Mr Sharkey: We did look in the last piece of research that we did at what was driving representations from local residents in regard to live music, trying to gauge and sense in terms of nuisance and noise what the impact might be. As it transpired, 77% of all objections about live music came from local residents; 68% of those were raising concerns about noise and potential exposure to noise and the creation of a public nuisance. We began to formulate the opinion rather quickly that there was something of a perception problem; it was simply because it was live music and therefore there was going to be a noise issue. That set us off on a quest which proved to be quite an intriguing journey because, as it happened, in 2006, that was at the same time the Department for the Environment had commissioned their own study, the Taylor Report, looking at noise complaints and statutory noise abatement notices issued by local authorities under the Environmental Protection Act. It says in the Taylor Report, “It is typical for a local authority to have about 90% of complaints about music to be arising from a domestic source”, not live entertainment. The Forum’s report did actually include part of a presentation given by environmental health officers to their local licensing committee where it explained that live music complaints or entertainment—because they did not separate recorded music from live music—amounted to 7% of all complaints received in that local authority in the previous 12 months. That, of course, was in comparison to the 10% of complaints which were about barking dogs and the 12% of complaints which were about burglar alarms going off much too early or, in fact, that 13 times more complaints were received about the next door neighbour having the stereo on too loudly at four o’clock on a Sunday morning. We also went back and became aware of a study commissioned by the Westminster Residents Association looking specifically at local residents’ viewpoints of areas of the West End like Soho and their concerns and live music came bottom of the list in terms of noise issues that they as residents of a very compacted area like Soho felt impacted upon their lives. We are having some trouble, as have several government
departments, substantiating this widely held belief that live music is a source of public nuisance and impact.

**Q232 Chairman:** I quite accept that you strongly feel there is no linkage and John has quoted the chief constables. Going back into my distant youth, I used to attend concerts by bands like Sham 69 and the Angelic Upstarts which certainly were focuses for public disorder. At the last Sham 69 concert I went to it was stopped half-way through since a rather substantial fight broke out in the middle of the Roundhouse.

**Mr Sharkey:** Which I hope you were not involved in, Chairman!

**Q233 Chairman:** I was disapproving from above! You would accept that there are certain bands that do attract that kind of audience, would you?

**Mr Sharkey:** I think it is very important to remember with as much as humility and respect as I can possibly muster, without possibly passing any indication as to your age and mine at this point, that that was 30 years ago and yes, it is true that Mods and Rockers did chase each other up and down Brighton seafront, but that too was 40 years ago. I cannot think of a single event that has happened in the last five or ten years where there would have been that cause for concern.

**Q234 Chairman:** One or two of your concerts got quite lively, did they not?

**Mr Sharkey:** Yes, but that was just the exuberance of hot and sweaty young people displaying testosterone, adolescent enthusiasm!

**Q235 Rosemary McKenna:** That is the perfect example of a Punk to a member of the Establishment!

**Mr Sharkey:** I think it is perhaps important to remember that in the very first piece of work the Live Music Forum did we uncovered that during that research period there had been approximately 1.7 million live music events throughout England and Wales in pubs, bars, hotels, restaurants, village halls, student unions, et cetera, et cetera. It obviously begs the question, which we have asked several police forces, of exactly how many of those 1.7 million events may have given any cause for concern. We are still awaiting a reply two years later.

**Mr Smith:** Can I just go back to the original point that we are looking at now with less than two weeks to the Act changes and the incidental music compared to the small venues exemption that we were looking for is a perfect example because when we looked at the incidental music guidance—because it is not in the Act, it is in the guidance—we thought this could solve the problem if it is interpreted properly, but because it is in the guidance it is full of maybes and could be and not “This is live incidental music. Incidentals could be construed to be this . . .” because licensees will say we are not taking the risk. Guidance like that has not been uniformly applied and we have had different authorities applying this guidance in different ways. I think this is back to what we had under the PEL system where it was different authorities and different licence fees, different structures totally. That is one of the reasons why we think that possibly could have been a good thing, but unless it is on the face of the Act it does not work. DCMS is looking at this exemption for venues with a capacity of less than 200. I believe there might be some objections from LACORS and from the police about it, but we have enough ammunition to deal with it. One of the problems that the Act has done is it has encouraged people to object and object to all sorts of things. They might have a problem in a local pub with people shouting and slamming doors and they use the live music as an excuse to get at the licensee and write a letter of objection. A perfect example is what happened at Kenwood with the open air concerts when Camden Council pulled them because a number of residents objected. This is exactly what the Act was supposed to overcome, this balance between society and where society has its culture and then people’s privacy and right to a peaceful life. These are concerts that finish at ten in the evening and then there are a few fireworks afterwards. It entertains tens of thousands of people. The objections were from a handful of quite vocal residents. I am pleased to say those concerts have been reinstated, but it just shows what can happen. What the Act did not do was encourage people to say, “This is great. I really like having a live music venue in my village or town.” Whenever you do that the licensing authorities take notice of what is said. There was a very strict interpretation of it and that is one of the things that we hope we can remedy. We should have a small venues exemption placed before Parliament soon and we do hope it goes through. The other thing that I do not think we will get and what we would dearly like is a fast-track variation of the licence to recognise that live music is not a threat to law and order in every circumstance and in most circumstances to let it through. I think we have been told that is a major variation of the licence and will not be included in minor variations.

**Mr Sharkey:** I am aware that a couple of weeks back in another evidence session the subject of Kenwood came up and the Committee was advised that people could make a representation in favour of an application and indeed philosophically, in terms of the broad wording of the Act, that is correct. However, what I think may perhaps have been left out of that conversation was that local authorities can only take on board representations made from interested parties living within the vicinity of those premises. There is no definition of vicinity, but I think we can assume, out of those tens of thousands of people that might attend a concert in Kenwood on a summer’s evening and I would include myself in that number, many of them would not be in a position simply because they do not, with any reasonable interpretation, live within the vicinity. For example, I personally live one mile away from Kenwood and I do not think I can anticipate that Camden could accept my representation because the law dictates that they must reject it as I do not live within the vicinity. There is a second thing that was
Chairman of the Forum, the licensing officer, sensitivity, their knowledge, their support, their involvement is a representative of Brighton and Hove. Brighton is exemplary when it comes to their understanding of live music and the cultural industries and the nighttime economy. I personally accompanied during the transition period, as Chairman of the Forum, the licensing officer working with some of the smaller live music venues who was advising them on how to fill in the applications, making sure they went through the application process successfully. They could not have done more and yet on Friday afternoon when I downloaded the advice sheet from Brighton and Hove’s website to local residents on how to deal with a representation it reads, “Who can make representations (objections)? On what grounds may a representation be made? How can I object most effectively?” At no point in time in the guidance available from the local authority’s website does it make any indication that you can make a representation in favour or in support of an application. That is further accentuated by the role of the Borough of Kensington and Chelsea whose website I checked this morning. The link on their page actually says, “How to make an objection”. So what is the philosophy behind the Act? Making representations is a perfectly sound and valid one. It appears that the Act is not fully understood or interpreted. There are endless examples of where this kind of thing has been misapplied or misinterpreted in a perhaps potentially quite overzealous way.

Mr Sharkey: I do not think we have had a lot of larger scale events like Kenwood because usually they have got the wherewithal to get their act together and get some legal advice and to talk to people like us to get some evidence in. It is very much the smaller things that happen, that is, little things like poetry readings in a cafe in Scarborough that were regular lunchtime events and they had a bit of music and they stopped the music mainly because of the hassle of filling in the form to do this. It is a plethora of small examples. This is why we are really honing in on the small venues as where the problem is at the moment. Mr Spence: That lack of commonsense interpretation and also the inconsistency in interpretation, which is particularly difficult for the small venues, is why Equity would also support the small venue exemption. Our members who work in variety, particularly in the north of England, have reported back to us quite regularly the difficulties that small venues have. They feel very strongly that if there was an exemption particularly on the area where the entertainment was being performed—because that is the important bit, a pub might be a bigger complex, have restaurants and so forth, but the particular area where the entertainment is being performed is what we would seek an exemption for—then it makes it much easier for the small venues to put on entertainment, which may be a marginal thing for them to do. We get the feedback on a regular basis at our variety advisory committee that that would be helpful.

Mr Sharkey: We were promised a discussion about exemptions last November by the then Secretary of State James Purnell and I have written to the current Secretary of State enquiring as to when he might expect to see that. It is 12 months since that was first raised. I would like to touch on one other subject, in more than 499 people going to be following this procession around the village putting these bouquets of flowers on the wells around the local area.
many ways referring back to the possibility of an exemption for smaller premises and indeed the earlier discussion we were having regarding crime and disorder. We first became aware of this issue towards the end of last year when we learnt that the Metropolitan Police in conjunction with the representative body for the 33 London boroughs had jointly written to each of the licensing officers in the 33 London boroughs as part of the triennial review process of local policy statements asking them to include some very specific wording in their new licensing policy statements, which obviously were published at the beginning of this year. I want to quote to you very carefully from one local authority. Somewhere in the region of 12–13 of the London boroughs have now adopted this policy to one degree or another. It says, “A liaison protocol has been agreed between the Licensing Authority and the Metropolitan Police Service with regard to their involvement and responsibilities in respect of crime and disorder in licensed premises. In the interests of public order and the prevention of terrorism, the Licensing Authority would expect that for significant events, a comprehensive risk assessment is undertaken by the premises licence holders . . .” It provides a definition later on of what a “significant event” is which reads as follows: “An event will be deemed to be: any occasion in any location licensed under the provisions of the Licensing Act 2003, where there will be a live performer/s—meaning musicians, DJs, MCs or other artiste; that is promoted in some form by either the venue or an outside promoter; where entry is either free, by invitation, pay on the door or by ticket.” We then went and obtained a copy of this so-called risk assessment as developed by the Metropolitan Police. There are two areas in it I would like to draw to the Committee’s attention. Firstly, there is a question on the front page which asks for the “musical style to be played/performed (eg Bashment, R’n’B, Garage).” I have no idea quite why the Metropolitan Police think they need this information, but it may be nothing more than a happy passing coincidence that those three kinds of music are all three genres of music that would be appealing to a large audience of young Black or Asian people. We then move on to page three where it requests that the “full name and aliases, address, date of birth, contact numbers” for any and all artists/performers to be performing at that event that evening must be provided to the Metropolitan Police at least 14 days in advance of that event taking place. Rather helpfully, at the time bottom of the page it says, “Please note, Police and/or the Local Authority Officers may visit the event. If it is found that there are acts performing or appearing of whom previous notification has not been given . . . and on whom, therefore, it has not been possible to conduct a proper risk assessment, this may jeopardise any future events either by the promoter or at the venue.” The quite clear correlation here is that someone is deciding that not only is live music and the artist a threat to crime and disorder, but now potentially the prevention of terrorism. I can give you a simple illustration where this has already had an impact. Two months ago a local councillor in a north London borough endeavoured to organise a local event to help support young people. What he was suggesting was to hold a little gig under the auspices of a Temporary Event Notice in a local park, in a marquee between one o’clock on a Saturday afternoon and eight o’clock on a Saturday evening. There was no alcohol sold. You could only purchase three tickets maximum via a secure website. He had offered to supply eight SIA security registered doormen and the event was to raise money for the local teenage cancer trust. This was a local councillor doing something to help support young local people and a local cancer charity. The Metropolitan Police objected to that event taking place on the basis that the councillor refused to fill in that form and provide them with the names, addresses, dates of birth and contact numbers of the young musicians that were due to be performing that evening.

Q239 Chairman: This is not the consequence of the Licensing Act; this is the consequence of the Metropolitan Police’s use of it. They are exceeding what is required under the law. Mr Sharkey: Absolutely, and they have been co-operated with by at least 12 local authorities who have incorporated wording clearly steered in that direction into their licensing policies which were all published and approved. This one was approved at a full council meeting in November 2007 as indeed were all of the other 12 approved at full council meetings.

Q240 Rosemary McKenna: There are bigger problems than simply the Act. It is the interpretation of the Act by some police authorities which is going to reduce the opportunities for young people to learn their craft or just enjoy themselves. Mr Smith: I think part of it is because the guidance is bigger than the Act, it is a bigger book than the Act, it invites this interpretation. When we were originally lobbying on the Bill in its early stages it did have a clause in that that the performers would be criminally liable if they were performing in unlicensed venues with the threat of jail. We had that removed early on. That is kind of where it came from and this is harking back to that, but the guidance allows that to happen. Mr Sharkey: One of the wonderful ironies in all of this is that, as some of you may recall, myself and the Secretary of State for the Department for Culture, Media and Sport actually did perform live in this town not three months ago and yet under the interpretation—

Q241 Rosemary McKenna: You went down on the form. Mr Sharkey: Ironically, the local authority covering that performance has included this kind of wording in their new policy statement. Therefore, indeed should the Secretary of State and I choose to repeat that performance I suppose we will be providing our name, address, date of birth and contact numbers to
the Metropolitan Police at least 14 days in advance of that event taking place to ensure that we are not in any way a threat to the prevention of terrorism.

Q242 Rosemary McKenna: And the other four performing were MPs.

Mr Sharkey: Yes.

Q243 Chairman: Were we covered by a Temporary Event Notice for that?

Mr Sharkey: I have absolutely no idea, Chairman, but I will endeavour to find out.

Chairman: I doubt they have got a premises licence on the boat.

Rosemary McKenna: I think they have a premises licence.

Q244 Paul Farrelly: Clearly the Metropolitan Police is flush with resources as are big unitary authorities, but in areas like mine which are covered by second tier authorities the legal officers are thin on the ground and, quite frankly, they struggle to master the basics of freedom of information. I would be amazed if they would be able to stand up to the police and understand and have the time to interpret a big book such as you are describing.

Mr Sharkey: The reason this came to our attention was that a Turkish restaurant in Mill Hill in north London had applied for a Temporary Event Notice for a three-hour period on a Bank Holiday Friday evening to cover some belly dancing. The Metropolitan Police objected to that Temporary Event Notice on the grounds that they had not completed this risk assessment form and, therefore, they were not in a position to make a proper risk assessment of exactly what impact belly dancing might have on crime and disorder.

Q245 Chairman: Do we take it from this that your real concern is less the Act but actually the actions particularly of the Metropolitan Police?

Mr Sharkey: It is both. Certainly with regards to smaller premises, we do not feel at this point that there is any rationale for those smaller premises being covered by this legislation.

Q246 Rosemary McKenna: But there is hope for the smaller premises, is there not? The Government is about to lay an Order which would be really important.

Mr Sharkey: It would be fantastically helpful. On behalf of UK Music can I say that I would like to make it a matter of record that we reject the very notion in the strongest possible terms that any 15-year old musician standing on the stage in a local park on a Saturday afternoon could in any way be interpreted as a threat either to crime and disorder or the prevention of terrorism, and I would call on the people involved in this to withdraw those comments and revise those documents as quickly as possible.

Q247 Paul Farrelly: We have seen today how the representatives of the licensed premises, which include small pubs as well as big chains, have said they are broadly happy with the Licensing Act, but where it applies to smaller venues and live music there are serious problems. We have also heard in the course of this inquiry evidence from working men’s clubs and other such establishments where they are saying the burden on us is disproportionately greater from the Act and the costs than on big pubs that have a large turnover. Is it fair to say, therefore, that the burden of the Licensing Act as far as live music is concerned tends to fall more on those places which are more likely to want to have music rather than just have as many people coming through the door quaffing as much drink as possible and that is something that needs to be addressed in any reform to encourage more live music?

Mr Smith: It is absolutely right. I think that is where the drafters of the Act missed out, they said the intention was good, but when it came to practice, for exactly the reasons you describe, it has not worked. As Feargal said at the beginning, we want our members to work in safe premises and comfortable environments and I am sure Equity feels the same, but to sweep in entertainment and, particularly from my point of view, live music with all of those other issues and those law and order issues has completely skewed it against live music. We are fine with regulation, we are fine with protection for the performers, but we think it has been swallowed up by something much bigger and we have given some examples as to how that has worked.

Mr Sharkey: One of the most extreme cases we came across was a local authority somewhere in the Home Counties where every single application for live music that they had the environmental health department objected to as a matter of principle, even on occasions when there were no objections from anyone else. As part of reviewing and revising for this discussion today I did go back and check that local authority’s progress since the situation of the Live Music Forum and at the very first meeting that they held in January this year they attached a condition to a pub’s licence that specifically excluded incidental music from taking place on the outside patio area. As we have discussed, incidental music is exempt from the legislation, but here they are, through misinterpretation, over-zealousness, not understanding what the process was trying to drag something that was quite specifically exempt from the legislation back into it by attaching it as a condition to this publican’s licence. As you will be aware, we did uncover one local authority that for all intents and purposes had been in the process of—unknowingly perhaps—banning live music during the months of June, July and August unless you installed air-conditioning and the premise was that as the ambient temperature increased it would necessitate keeping the windows open and the live music would drift out and cause potential nuisance to the neighbours. That happened until we went along and I had occasion to speak to the licensing committee. I did not indicate who they were, but I gave certain examples of some of the areas that we had been covering. I have to admit, we were not as the Forum trying to take issue over a single decision a local authority had made, but we were looking for repeated and consistent patterns of decision making,
Ironically after my presentation one of the main licensing committee turned round and said, “Feargal, please tell me that one of those examples was not us,” to which I felt compelled to reply, “Well, actually it’s funny you should mention that [ . . . ]”

Q248 Chairman: Stephen, do you have anything to add going beyond music?
Mr Spence: If the small venue exemption was put in place, if the single transferable licence for travelling forms of licensable activity was put in place, then we think, along with some clearer guidance perhaps in order to have the Temporary Event Notices issued in line with some common set of principles rather than making it up as you go along, which frankly seems to be the process at the moment, that would considerably assist with the operation of the Act, if live music and entertainment more generally is kept within it. I do not think I would have anything more significant to add other than to underline that there are ways of amending the Act that we think are fairly painless that would help enormously and we would urge that those measures are taken. I know, for example, there is an argument that there is an existing way of getting an exemption under the Act, but our understanding from individuals is that the Section 177 method is so complex and so misunderstood nobody goes near it. Equity would be very satisfied if those three points specifically were addressed.

Q249 Chairman: I think we have covered everything. Thank you very much.
Mr Sharkey: Thank you to all of you for having this hearing and highlighting some of the ongoing issues of concern. We greatly admire and appreciate the support. It is really important for young artists, musicians, songwriters, performers and lovers of music everywhere that we struggle and continue to get this right because we must get it right. Thank you once again for all of your time.
Tuesday 25 November 2008

Members present

Mr John Whittingdale, in the Chair
Philip Davies    Adam Price
Paul Farrelly        Mr Adrian Sanders

Memorandum submitted by Object

WHY LICENSING REFORMS ARE NEEDED FOR LAP DANCING CLUBS

ABOUT OBJECT

Object is a human rights organisation which campaigns against “sex object culture”—the increased sexual objectification of women in the media and popular culture. This promotes attitudes underpinning discrimination and violence based on gender. Object acts as an adviser to Amnesty International UK and provides educational material to groups such as NSPCC, WOMANKIND worldwide and Rape Crisis England and Wales. Our current campaign “Stripping the Illusion” strips the illusion that lap dancing clubs are harmless, impact-free leisure venues and challenges a licensing regime which has facilitated normalising of the industry.

EXECUTIVE SUMMARY

Since 2005 lap dancing clubs have been licensed as restaurants. This has acted as a green light to the industry which has doubled in size since 2004. The spread of lap dancing clubs—which councils have been near powerless to stop—and their subsequent mainstreaming runs counter to the promotion of gender equality. The Licensing Act 2003 is not an adequate vehicle for the licensing of lap dancing clubs. Object and the Fawcett Society are therefore calling on the Home Office to introduce clauses in the upcoming Policing and Crime Reduction Bill (PCRB) which will extend the Sex Encounter Establishment category nationwide and remove an exemption for Premises Licence holders. This will enable local councils to licence lap dancing clubs as SEEs and give local communities greater powers to control the number of lap dancing clubs in their area.

1. WHAT ARE LAP DANCING CLUBS?

Lap dancing clubs are venues where customers pay female performers to dance their on their lap whilst removing most or all of their clothing. This occurs at tables, in private rooms or in private booths.

2. CURRENT LICENSING OF LAP DANCING CLUBS

Since introduction of the Licensing Act 2003 it has become far easier for lap dancing clubs to obtain licences. Prior to the Act local councils could impose two licences on lap dancing clubs: a public entertainment licence and a licence for striptease. Today lap dancing clubs require only a licence to retail alcohol and are boxed into the same “one size fits all” licensing category as cafes and karaoke bars.

3. WHY IS THIS A PROBLEM: LOCAL COUNCILS

— In taking their lead from the Act many local councils do not differentiate between Premises Licence applications. This makes monitoring difficult, for example in London 20% of local authorities are unsure how many lap dancing clubs they licence.
— Local authorities may only apply regulation to lap dancing clubs which corresponds directly to four licensing objectives; public safety, public order, public nuisance and protection of children from harm. This prevents them from putting in place conditions relevant to lap dancing clubs such as how many licences are granted in an area or the use of private booths.
— In London alone half of all local authorities are unhappy with current licensing and at least 25 local authorities across England and Wales have experienced serious problems in the licensing of lap dancing clubs.
4. **WHY THIS IS A PROBLEM: LOCAL PEOPLE**

   — The Licensing Act introduced restrictions on who can have a say in the licensing of lap dancing clubs. Views will only be considered if they come from residents who pass a “postcode test” and live within 100–200 metres of a proposed lap dancing club. This fails to take into account the impact of lap dancing clubs on people who work in or travel near the area.

   — It is extremely difficult for residents to prove that licensing objectives will be breached and the Act places the onus on residents to provide evidence of this rather than placing the onus on club operators to justify their application.

   — Prior to the Act residents could contribute to licence renewal hearings which took place every one to three years. However a Premises Licence runs in perpetuity unless an application for a review finds a licensing objective has been breached.

5. **WHY THIS IS A PROBLEM: GENDER EQUALITY**

   — Lap dancing clubs are part of the commercial sex industry and have a different social impact from other venues included in the Premises Licence category. This is not accounted for in “one size fits all” licensing.

   — Lap dancing clubs promote seeing women as sex objects, not people. They fit into a wider culture of sexual objectification which underpins discrimination and violence based on gender—as Object’s Stripping the Illusion campaign highlights. However a local authority cannot take this into account when licensing lap dancing clubs—the Licensing Act 2003 prevents them from using policy (such as a gender equality policy) to overrule the four licensing objectives. This runs directly counter to the 2007 Gender Equality Duty which requires local authorities to promote gender equality in all they do.

6. **LAP DANCING INDUSTRY PROPOSALS**

   Lap dancing club owners, represented by the Lap Dancing Association, are arguing against tighter regulation. Their proposals would instead see changes to the Licensing Act 2003, to ensure that all applications for lap dancing clubs are clearly noted by local councils as “major variations”. This is a wholly inadequate proposal that does not address the fundamental problem: legislation drafted to licence coffee shops and karaoke bars is simply not adequate for regulating the commercial sex industry. Tinkering with the Licensing Act 2003 would do nothing to give local communities a greater say in whether lap dancing clubs are given licences and would not allow gender equality to be considered as a licensing objective.

7. **THE ONLY VIABLE SOLUTION: SEX ENCOUNTER ESTABLISHMENT LICENCES**

   Local councils should be enabled to licence lap dancing clubs as Sex Encounter Establishments (SEEs). An SEE is a venue where live visual entertainment of a sexual nature is provided. The licence is currently used for peep shows in London and allows local councils to decide how many such venues they licence and where they should be located. It also allows councillors to set “null policies”—where the decision is taken not to grant any licences.

   Lap dancing clubs clearly fall under the category of SEEs—yet this is not legally recognised. The law should be changed so that lap dancing clubs can be required to purchase both a Premises Licence (for alcohol) and an SEE licence for lap dancing. The same powers that currently apply only to sex shops, peep shows and sex cinemas will therefore also apply to lap dancing clubs. This will restore democracy to the licensing process by giving local communities greater powers to decide on whether any lap dancing clubs should be operating in their area. Crucially it will allow gender equality to be considered in the licensing of lap dancing clubs.

**LAPDANCING ESTABLISHMENTS: LEGAL BRIEFING**

**ADVICE**

**INTRODUCTION**

1. I am instructed on behalf of Object and the Fawcett Society to advise briefly on the system for the regulation of lap dancing in England and Wales. The context is that Gerry Sutcliffe MP, a Minister in the Department of Culture, Media and Sport, has written to the Chief Executives of local authorities, inviting them to state whether they desire additional powers to control such establishments, and in the light of their response the Home Secretary has indicated that additional powers will be granted to local authorities. I understand that this advice will be shared with Members of Parliament.
THE PROBLEM

2. Under the Licensing Act 2003, licensing authorities may only impose controls on lap dancing establishments (whether by attaching conditions or outright refusal) if (a) a relevant representation has been made on the application by a responsible authority (eg the police) or interested party (a local resident or business) and (b) the authority considers it "necessary" in order to promote one of the licensing objectives. These are the prevention of crime and disorder, public safety, prevention of public nuisance and the protection of children from harm.

3. The experience of licensing authorities is largely that the Act provides an ineffective tool to control the proliferation of such establishments or to prevent fully nude dancing or the maintenance of distance between dancers and customers. The reasons for this are at least threefold. First, objecting residents have to live in the vicinity. It is not enough if they just visit there to shop or enjoy leisure. Second, it is very difficult for residents to prove that a particular harm will arise from the licence. This problem has recently been exacerbated by the decision of the High Court in Thwaites v Wirral Borough Magistrates Court [2008] EWHC 838 (Admin) which emphasised that findings as to future harm need to be based on evidence. Of course, it is very difficult to prove harm to the licensing objectives prospectively. Third, the ambit of the licensing objectives is inapt to reflect wider community objectives, eg tourism or regeneration policies; or the kind of concerns to which lap dancing establishments may give rise, regarding the character of the area and the fears of those, particularly women, who have to pass by such establishments.

4. A further difficulty facing authorities is provided by the Secretary of State’s Guidance under section 182 of the Licensing Act 2003, to which authorities are obliged to have regard. This provides:

2.17 The Indecent Displays Act 1981 prohibits the public display of indecent matter, subject to certain exceptions. It should not therefore be necessary for any conditions to be attached to licences or certificates concerning such displays in or outside the premises involved. For example, the display of advertising material on or immediately outside such premises is regulated by this legislation. Similarly, while conditions relating to public safety in respect of dancing may be necessary in certain circumstances, the laws governing indecency and obscenity are adequate to control adult entertainment involving striptease and lap-dancing which goes beyond what is lawful. Accordingly, conditions relating to the content of such entertainment which have no relevance to crime and disorder, public safety, public nuisance or the protection of children from harm could not be justified. In this context, however, it should be noted that it is in order for conditions relating to the exclusion of minors or the safety of performers to be included in premises licence or club premises certificate conditions where necessary. The Local Government (Miscellaneous Provisions) Act 1982 insofar as its adoptive provisions relate to sex establishments—sex shops, sex cinemas and in London sex encounter establishments—also remains in force.

5. In fact, the Local Government (Miscellaneous Provisions) Act 1982 ("LGMPA") provides no control over the proliferation of lap dancing establishments. Object and the Fawcett Society’s argument is that it should do so. It is easy to understand the justification.

6. The LGMPA allows local authorities to licence and regulate sex establishments in their area. It is important to note that the provisions are adoptive, so that an authority which does not wish to have these powers may simply refrain from adopting the legislation.

7. The benefit of the LGMPA is that it provides a much wider list of grounds for refusal of a licence than is provided for under the Licensing Act 2003. These include that the number of sex establishments in the locality is equal to or exceeds the number which the authority consider is appropriate for that locality; and that a licence would be inappropriate, having regard to the character of the relevant locality, or the use to which any premises in the vicinity are put, or the layout, character or condition of the premises themselves. Indeed, if the licence is refused on those particular grounds, there is no appeal to the magistrates court.

8. However, the LGMPA cannot currently be used to regulate lap dancing. This is because of the definition of “sex establishment”.

9. Outside London, a sex establishment is defined as a sex cinema or a sex shop. Therefore, outside London, while the LGMPA regulates sex on celluloid or on the page, it does not regulate live sex. The reason for the lacuna is principally historic rather than logical.

10. In London, the definition of “sex establishment” goes wider than merely a sex cinema or a sex shop. It includes “sex encounter establishments”. These are premises supplying (inter alia) performances “which wholly or mainly comprise the sexual stimulation of persons admitted to the premises”, services provided
by persons “who are without clothes or who expose their breasts or genital, urinary or excretory organs while they are providing the service” (e.g. topless bars), and entertainments by persons “who are without clothes or who expose their breasts or genital, urinary or excretory organs during the entertainment” (strip tease). Thus, the definition in London is plainly wide enough to encompass lap dancing. However, any premises which have and use a licence under the Licensing Act 2003 for regulated entertainment or late night refreshment are taken out of the definition of sex encounter establishments. Thus, in London a live sex show is regulated under the LGMPA, but not if customers can buy a pizza with the show. Again, the logic is hard to discern.

**The Solution**

11. Object and the Fawcett Society therefore argue for a simple amendment to the LGMPA:
   (a) to give authorities outside London the same power to regulate sex encounter establishments as are enjoyed by London authorities; and
   (b) to remove the exemption for premises with licences for regulated entertainment or late night refreshment.

12. This is the thrust of the Ten Minute Rule Bill presented to Parliament by Roberta Blackman Woods MP on 18 June of this year, which obtained cross-party support.

13. In short the benefit for local authorities would be that they could obtain wider powers to control the proliferation of lap dancing establishments than they currently enjoy under the Licensing Act 2003, with less risk of appeal (and therefore costs). Those authorities who do not wish to have the powers need not adopt the legislation. It is important to note that an amendment to the LGMPA would not require authorities to refuse licences. It would simply give authorities wider powers than they currently have to regulate whether, where and on what terms lap dancing premises may be established, to reflect the priorities and wishes of the wider community.

14. In his letter, the Minister requested views as to whether planning law might assist in the control of lap dancing establishments. The answer is that planning plays at best a marginal role. Any premises currently enjoying a D2 (assembly and leisure) use would not need planning consent to introduce stripping. Even if they enjoyed a different planning use, such as A4 (pubs), they might be able to argue that stripping was merely incidental to the primary use and did not involve a change of use requiring planning permission. Even if this argument did not avail them, it is fair to say that national and local planning policy is largely silent on stripping as a species of entertainment, and it would be hard to use planning powers effectively to protect against such proliferation. I am far from saying that planning is entirely toothless, for the character of the area and legitimate fears of crime among local people are material planning considerations. But for practical purposes, planning does not provide a significant hurdle for those wishing to establish lap dancing venues. The benefit of the licensing regime is that it is far more sensitive to the precise content of the “entertainment” being offered, and any variations in the nature of such entertainment over time.

**Legislative Amendments**

15. The legislative amendments required are brief. A suggested Bill is attached at Appendix 1.

16. One other matter worthy of consideration is how to ensure that nudity as part of a dramatic work is not accidentally picked up by the definition. I do not believe that the definition of sex encounter set out above could seriously be held to encompass nudity incidental in a play. However, should it be considered necessary, the definition may be followed by a new section: “For the avoidance of doubt nudity incidental to a dramatic work shall not require a licence under this Act”.

17. I also understand that the Home Office is considering whether pubs which have a weekly striptease would be made to seek a sex encounter licence. It does not seem to me that this raises any issue of principle. The definition of sex cinema and sex shop in Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 both include the test of “significant degree”. That leaves the matter as one of sensible judgment by the licensing authority. There is no reason for a different approach in the case of sex encounter. The authority would have to consider (a) whether the entertainment or service provided meets the definition of sex encounter, and (b) whether this is occurring to a significant degree. These are pre-eminently licensing judgments for the licensing authority, of a kind which authorities are well-used to making.

**Arguments of the Lap Dancing Association**

18. The Lap Dancing Association has published certain arguments against tighter restriction, and it is right that I deal with them here.

---

4 LGMPA Sch 3 para 3A.
5 LGMPA Sch 3 para 3A.
Argument | Response
--- | ---
Lap dancing is entertainment, not sex encounter. | The fundamental nature of the transaction is that a man pays a woman to take her clothes off and place her sexual organs near his face. The notion that this is not part of the commercial sex industry is not seriously sustainable.
Performances are ancillary to alcohol. | No customer believes that he goes into a lap dancing club primarily to drink. The clue is in the title.
Anyone can object to a lap dancing club. | This is untrue. Under the Licensing Act 2003 objections from local people have to come from those living or working in the vicinity. “Vicinity” is usually taken by licensing authorities to mean 200 metres or less. There is no scope for a local resident to object to a lap dancing club on their local high street unless they happen to live or work within that radius.
Councils have sufficient powers to impose restrictions on premises licences. | This is simply untrue, as the councils who have taken on the lap dancing industry and lost will testify. The problem is that the Licensing Act 2003 does not provide sufficient tools for any control over the quantum, location or operating conditions of establishments, because the licensing objectives are not directed at the real concerns to which these premises give rise.
Lap dancing clubs are not sexist establishments because many are owned and run by women. Performers are self-employed so choose when, where and for whom to perform. | The viewing of young women as objects whose nudity can be procured for a sum of money is of course inherently sexist. But in any event this argument does not begin to address the real point, which is that communities are entitled to some choice as to the quantity and location of such establishments.
To licence premises as sex encounter establishments will add red tape. | “Red tape” is simply a derogatory synonym for a licence. There are many establishments that require more than one consent, eg casinos and bingo clubs with bars. This is no different. Should there be an issue regarding fees, the Secretary of State can issue Guidance that fees should be limited to cost recovery.
The industry will go underground. | That is an argument against regulation of anything. If it does, it will be the duty of the enforcement authorities to prosecute. Furthermore, it is revealing that the Lap Dancing Association argues that if an attempt is made to regulate its members they will conduct their business criminally. This is an argument for more, not less, regulation.
Regulation will do nothing about prostitution and drugs. | The argument for greater regulation is not principally concerned with prostitution and drugs. The Chairman of the Lap Dance Association is reported as saying: “Like Object we are concerned about the practises of irresponsible operators and potential links with prostitution and drugs”. If prostitution and drugs are linked with lap dancing establishments, that again is an argument for greater regulation.
It would be sufficient to ensure that the introduction of adult entertainment is treated as a major variation of a premises licence under the Licensing Act 2003. | That does not address the problem, because the licensing objectives provide insufficient criteria for the control of the quantity, location and operating conditions of such premises.
An obligatory code of practice would suffice. | Even were such a code of practice to be introduced and observed, that could only control the operational practises of the clubs, not whether and where they should be permitted in particular local authority areas.

**Conclusion**

19. It seems to me that to bring lap dancing into the same category as sex cinemas and sex shops and to licence them as such is a modest and sensible response to the recent proliferation in such venues, enabling authorities to exercise greater control if they want to.

---

6 This claim was made by Simon Warr, President of Lap Dancing Association, reported in the *Morning Advertiser* of 22.4.08 and the *Independent* of 26.4.08.
7 *Morning Advertiser*, ibid.
APPENDIX 1

PROPOSED AMENDMENTS TO THE LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982

A Bill to extend the law regarding the licensing of sex establishments from London to the rest of England and Wales and for other purposes.

2. In Schedule 2 paragraph 3A of the Local Government (Miscellaneous Provisions Act) 1982, sub-paragraphs (i) and (ii) shall cease to have effect.
3. Schedule 1 (which makes minor and consequential amendments) shall have effect.

SCHEDULE 1

Local Government (Miscellaneous Provisions) Act 1982

1. In section 12, after the words “borough council” insert the words “in England and Wales”.
2. In Schedule 2 paragraph 3A omit sub-paragraphs (i) and (ii).
3. In Schedule 2 paragraph 3A omit the notation “(iii)”.

October 2008

Witnesses: Ms Sandrine Levêque, Advocacy Officer, Object and Ms Nadine Stavonina de Montagnac, screenwriter, journalist, artist and former lap dancer, gave evidence.

Chairman: Good morning. Welcome to the final session of the Committee’s inquiry into the implementation of the Licensing Act and we will be finishing this morning by hearing from the Minister who I am sure will be extremely pleased to know that you have all come to hear him. However, before we get to the end we are going to focus specifically on the issue of lap dancing licensing and therefore I would like to welcome from Object Sandrine Levêque, the Advocacy Officer and Nadine Stavonina de Montagnac. Adrian Sanders is going to start.

Q250 Mr Sanders: What in your view are the drawbacks of lap dancing establishments being regulated by the Licensing Act?

Ms Levêque: One of the key aims of the Licensing Act 2003 was to make licensing decisions more democratic at the local level and yet what we have seen with this legislation is that in terms of lap dancing licensing there has actually become far less democratic. Obviously this was not an intended consequence of the Act and we welcome the Government’s efforts to address this which are currently underway. These efforts are needed because local authorities now find themselves with fewer powers to control lap dancing clubs in their area. As you know very well, the Act amalgamated six different licensing regimes and the following venues are now all controlled by the Act. So we see pubs and nightclubs, indoor sporting events, restaurants and cafés that serve alcohol, hotels, private members clubs, theatres, cinemas and lap dancing clubs all under the same category, yet lap dancing clubs are not ordinary leisure venues, they are venues where customers pay female performers to sexually stimulate them by pole dancing, table dancing or dancing on their lap whilst removing most or all of their clothing. It is clear that they have more in common with peep shows and sex cinemas than Pizza Express or Odeon Cinemas. However, they find themselves all lumped into the same category sharing the same licence, the same licensing objectives and the same licensing processes. The Lap Dancing Association would argue that licensing conditions can be tailored to the activities offered by each venue, yet licensing authorities find themselves hamstrung by licensing objectives that focus on regulating leisure venues not elements of the sex industry. The licensing objectives focus on alcohol, crime and disorder and do not reflect wider community and equality objectives. The Secretary of State’s guidance under section 182 of the Licensing Act states that the 1982 Government Miscellaneous Provisions Act remains in force to assist local councils in controlling the sex industry. In fact the Act does not give local councils control over the proliferation of lap dancing clubs as they are exempt from that Act. So that is actually not true. Therefore licensing authorities find themselves with inadequate controls. These controls are inadequate because, as elements of the sex industry, lap dancing clubs have a very different social impact from other venues that hold a premises licence. They are linked to sexism in the workplace as a case just two weeks ago demonstrated where two women were awarded a £4 million payout for experiencing sexism and sexual harassment for two years at a city firm. That included colleagues conducting business in lap dancing clubs and using women in prostitution. The lap dancing clubs create no-go areas for women where their sense of security and entitlement to public space is reduced and, as the case of Newquay shows, they fundamentally change the nature of an area in terms of their local impact. Yet local residents are unable to object to a lap dancing club on the grounds of it being a lap dancing club. Instead they find themselves objecting on the grounds of parking,
noise, antisocial behaviour or, as a recent case in West Kensington showed, the location of toilets. Residents and local authorities are also unable to object on the grounds of gender. This is despite the gender equality duty which was introduced last year requiring local authorities to promote gender equality in everything that they do. Whilst some argue that because women choose to work in lap dancing clubs such venues therefore have no gender impact on the rest of society, this is an argument that clearly defies logic. Despite branding themselves as gentlemen’s clubs the fact remains that lap dancing clubs promote gender stereotypes and their expansion is therefore a key concern to women’s organisations up and down the country, including the Fawcett Society with whom we have joined forces, Rape Crisis England and Wales, the White Ribbon Campaign (which is a male-led campaign to end violence against women) and various domestic violence forums. The fact that gender, along with the violence forums. The fact that gender, along with the problems I have already highlighted, cannot be taken into account by licensing authorities, it is not the sign of a healthy democratic licensing system; it is the sign of a licensing system which tips the balance firmly in favour of club owners. My final point is the sign of a licensing system which tips the balance firmly in favour of club owners. My final point is that the LDA argues that these concerns are met by planning regimes and that lap dancing clubs are categorised as sui generis, ensuring that applications undergo a full consultation.

Q251 Chairman: If I may interrupt you, we do not usually have very long opening statements.

Ms Levêque: I was going on the previous session so I wanted to give as full an answer as I could.

Q252 Mr Sanders: Apart from all that, are there any positive aspects?

Ms Levêque: I think there are positive aspects if you are a club owner and there are multiple benefits because, whereas clubs required two licences before, they now require just one licence and a much more limited range of factors can be taken into account during the licensing process. They benefit from longer licences and, despite claims by the LDA that any resident can call a review of a licence, in practice it is very difficult for residents to get enough evidence together to do that. Also, licences are far cheaper than before. It is no surprise that lap dancing clubs have actually doubled in number since 2004. We have got that figure from using industry sources because obviously the government themselves—the local councils—do not have accurate numbers on how many lap dancing clubs exist.

Q253 Mr Sanders: There is a difference between people objecting to the licence on the basis that there is evidence of disorder (which is what the public can and should do if they have concerns) and people simply objecting because they do not like what happens inside the doors of the club. Would you accept that?

Ms Levêque: The point is that local communities are entitled to have a choice over the quantity and the location of lap dancing clubs in their area. For all the reasons that I outlined earlier they have a very different social impact from other venues that fall under those licensing objectives. Fundamentally those licensing objectives were drawn up to regulate leisure venues not elements of the sex industry. I think—and we are backed up by a lot of local residents in this—that people do have other concerns and they simply cannot be taken into account in the system as it is at the moment.

Q254 Chairman: You talk about the impact on the communities. We had evidence from the police a few weeks ago who said that lap dancing clubs were actually better staffed and less likely to cause disorder than other kinds of nightclubs.

Ms Levêque: Yes, I know; we are not saying that lap dancing clubs are increasing crime in the vicinity of where they are located. That is actually beside the point because obviously the Licensing Act is heavily focussed on crime and disorder and there are adequate controls to deal with that. This issue is very separate from that. Our issue is that local communities do not have the right to have their say in licensing processes; it is just not as democratic as it should be. I would also add that there are a number of cases where the local police have actually objected to a lap dancing club and, having spoken with the person who gave that evidence, it is interesting to note that they are saying that there no links to criminal activity within clubs but we have got it from the Metropolitan Police that the only mechanism in place for ascertaining that is customers themselves coming to the police and saying there are problems. As we can imagine that is very unlikely to happen. So there is actually no mechanism in place for the police to be getting that evidence and when they were doing that, i.e. doing undercover operations back in 2002, we did see a case go to court where the Metropolitan Police collected a lot of evidence and did suggest there were problems. So even on that argument I would say that it is not as simple as it seems.

Q255 Chairman: There may be lap dancing clubs where criminal activities take place in the same way as there are pubs where criminal activities take place and the police can obviously oppose the licence for a pub on that basis. That is not a reason to impose stronger controls on all lap dancing clubs.

Ms Levêque: That is not at all what we are saying. The proposal that we are calling for, the sex encounter establishment regime, does not give a licence for lap dancing clubs to sell sex; it is a licence for visual entertainment for sexual stimulation. We do not want that licence because we think lap dancing comes with selling sex; this is not at all what this is about. It is about giving local communities better controls which is a separate issue from looking at whether there are links to criminal activity. I just wanted to mention that the criminal activity side is not as simple as it seems and that is actually a policing issue, it is not an issue for the SEEL regime.
Q256 Chairman: You have talked about your concerns that lap dancing clubs may encourage sexual discrimination in the workplace; they may actually lead to rape. Is it not the case that actually you would like to close down lap dancing clubs?

Ms Leveque: We are not calling for a ban on lap dancing clubs; we are calling for them to not be licensed in the same way as leisure venues; we are calling for them to be recognised, licensed and regulated for what they are which is an element of the sex industry. We think that people should have more of a say in the licensing of them because they are part of the sex industry and that is not happening at the moment. This is not a campaign calling for them to be banned. It is very clear from our campaign literature and from what we have been saying that that is not the case. We think better controls should be in place.

Q257 Chairman: Does your organisation think they should be banned?

Ms Leveque: That is not what the campaign is about.

Q258 Chairman: That is not what my question is.

Ms Leveque: From our point of view lap dancing clubs promote sexism and the objectification of women in a context where we have extreme imbalances between the genders. Today I am wearing a white ribbon because it is White Ribbon Day which is an international day calling for an end to violence against women. We think it is really important to look at attitudes that underpin violence and discrimination against women. One of those key attitudes is dehumanising someone into an object. When you live in a society in which we are surrounded by images that do that we think it is important to look at practices that encourage this so we are therefore taking up this issue of lap dancing clubs because we think they should be licensed for what they are and for people to have more of a say if they do not want one to open where they live.

Ms Stavonina de Montagnac: As a former lap dancer—I was in the industry for eight years and I no longer do so—I would like to add that the most important aspect in this licensing for me is to call a spade a spade because the women entering the industry are vulnerable people; they enter it believing it to be something other than what it is. They think they will be protected and safeguarded but are being abused and brainwashed into it.

Q259 Chairman: You are suggesting that you had a completely false idea of what the industry was when you entered it.

Ms Stavonina de Montagnac: Yes.

Q260 Chairman: Do you think that applies to most girls who work in lap dancing clubs?

Ms Stavonina de Montagnac: In the eight years I was working in the industry and the hundreds of girls I have spoken with, a high percentage yes. A lot of girls enter it when they are very young and naïve thinking they will be stars. It is a celebrity lifestyle that is sold to them and they think that being sexy is empowering. You are only empowered for three minutes when you are on stage; the majority of the time you are not empowered. If anything like that went on in a normal career you could probably sue the employer. You have no rights; there is no sick pay; if you do not like it you leave, that is the answer to every complaint.

Q261 Chairman: It is said that you can make quite a lot of money doing this.

Ms Stavonina de Montagnac: No.

Q262 Chairman: That was not your experience.

Ms Stavonina de Montagnac: Not every day. In fact when women do not make a lot of money just to save face they have to claim that they do because it is how they are perceived by other women if they are failures. If you are pretty you make a lot of money and you are successful. Women should be judged by more than just how they look.

Q263 Philip Davies: Sandrine, I thought your last answer was very helpful in the sense that it was perfectly clear that this is not about democracy or licensing or anything, it is the fact that you do not like lap dancing clubs. That was particularly helpful. This idea that it promotes sexism (you gave a case where there was a payout for discrimination), why is it any worse than any other business? The Commission for Racial Equality had a large number of people who claimed racial discrimination, that does not mean it was inherently racist as an organisation, so why do you think lap dancing clubs are inherently sexist just because somebody pursued a claim?

Ms Leveque: I take issue with what you started out by saying. If you had listened more carefully to what I was arguing, because of what I was outlining about the links to sexism and objectification, lap dancing clubs have a very different social impact which means that licensing processes need to be as democratic as possible to take that into account. It is all very linked; it is not two separate issues which often happens with women’s issues, they get put into
a niche corner and are seen as something separate. To come back to what you are saying about the links to sexism, I think that institutions which operate on the principle of men being able to pay women to take their clothes off for them simply because they are paying them to do that is inherently sexist and it promotes gender stereotypes which is recognised by many women's organisations as something of concern. We are surrounded in our society by media advertising industries, a culture basically in which women are objectified in a way which has little or no parallel for men and boys. I do not think it takes a feminist to recognise that; I think that is just the way it is. That is something that does need to be talked about and discussed. The fact is that that cannot happen at the moment in licensing because a local council cannot overrule a licensing application on the grounds of gender equality; it cannot even take it into account. We have looked at that very extensively with legal experts and a gender equality specialist from Matrix Chambers, a licensing barrister, and they have very clearly shown that that needs to be changed.

Q264 Philip Davies: I appreciate that that is your personal view and it is your heartfelt view, but do you not accept that other people might take a different view to you and that actually many women might take a different view to you and whilst you see it as exploitation and sexual discrimination many women do not see it like that. Surely if they want to do that of their own free will, why should you impose your particular perspective on life on every other woman? Is that not sexism against women in itself, that you want to make the decision for them?

Ms Stavonina de Montagnac: If a famous painter who makes a lot of money was asked, “Would you paint if you weren't getting paid?” what would the answer be? Yes, of course. If a doctor was asked to save somebody's life without being paid, would they still do it? Yes, of course. Would any woman strip off if she was not getting paid? Anyone, even those who claim to be happy? It is just not going to happen. If there were better job prospects for women and better attitudes towards women, women would not go into these places. Of course they have to claim to be happy. I would liken it to the Stockholm syndrome whereby the abductee is identifying with their abductor in order to survive; you have to find light in any situation you have. Statistically the kind of ladies that end up in lap dancing places are the ones who are already unhappy, who are in a very difficult financial situation, a broken down relationship or come from abusive households. They find that this is the way for them to prove themselves to be empowered and rebellious; it is not because they chose to do it.

Q265 Philip Davies: Are you saying then that women who do lap dancing are only doing it because they could not do any other job, that they are not capable of doing any other job so they have to resort to this? Nobody actually makes a positive choice to do lap dancing, is that your contention?

Ms Stavonina de Montagnac: I think initially they would have a lot of difficulties in life and because it is glamorised they think this is a good shortcut to get to where they want to be, to get on the housing ladder, pay for education, to get out of poverty, to buy children's Christmas gifts or to look like a star like everybody is supposed to be aspiring to. What I am saying is that if we call a spade a spade then without closing the clubs maybe there is a possibility to run them better, to have a better attitude towards men and those who are vulnerable when they enter the profession who feel they want to get out there would be support available for them. We do not want to upset people. If there is a need in a society for this then it should be provided, but I think it is wrong for people to be abused in an environment and brainwashed into believing that is what they want. I was not happy but some obviously claim that they are.

Q266 Philip Davies: I understand it was not for you and neither of you two like it, but in terms of the licensing perspective, in terms of the licensing objectives and the protection of children from harm, public safety, prevention of crime and disorder, prevention of a public nuisance, would you not accept, taking aside your moral views and your personal experiences, that lap dancing clubs from a purely licensing perspective probably have a better track record than most nightclubs and many pubs which you seem to have no objection to. Ms Leveque: Before I get to that, I want to come back to what you were saying before. We are not saying that all women hate lap dancing clubs; that is a gross simplification of our argument and clearly not what we are saying. Of course some women do want to go to lap dancing clubs, want to work in them or want to run them; we are not saying that that is not happening. What we are saying is that some women do have an issue with them and some men have an issue with them and that should be taken into account. It is simply not happening at the moment and that is the core issue here. I think focussing it on whether women choose to work in lap dancing clubs or not is actually slightly beside the point because the core issue really is that if a lap dancing club is intending to open in your area as a community you have every right to have a say in that. The licensing objectives that you have just outlined do not reflect those community objectives of community cohesion, tourism, generation—or whatever you want to call it—and equality objectives. I object to you calling our issue with lap dancing clubs a moral objection because that is not the case. It is an equality issue, not a moral issue.
them and do not go and visit them. If you do like them, then go and work in one and go visit them. On that basis surely everybody is happy because everyone can exercise their free choice.

Ms Levêque: The whole point is that you do not have to go into a lap dancing club to be affected by it. That is the core issue here. I happen to live near five strip clubs. I happen to have worked in the city and experienced the sexism that they promote. I do not think that you have to go into the four walls of a lap dancing club to appreciate that they have an impact on the local community. What we are trying to get across here is that under the licensing objectives the Licensing Act was fundamentally not drawn up to talk about these issues—sex encounter regulation. We are not saying that they are the only issues that should be considered; everyone has their own views and everyone is entitled to their own views. That is what makes a democracy. If we are serious about having a democratic licensing regime we need to have a mechanism for all those views to be considered. If you look, there is case after case where that is not happening. Those same licensing objectives have been described as a straightjacket to us by residents up and down the country.

Q268 Paul Farrelly: I want to explore some of the alternatives to the current regime. From personal experience in my town—which is an old market town, Newcastle-under-Lyme in Staffordshire—the biggest licensing controversy by far over the past few years has been the opening of a lap dancing club called “Lace” in Newcastle-under-Lyme. A lot of people felt that that is the sort of thing that belongs in the big cities—Stoke-on-Trent next door—rather than in our town. I think to a certain extent the controversy was whipped up, as it were, by the press because lap dancing is always going to make a sexy story. The licensing committee, three of them, headed by the current mayor, waived it through because they were told that they could not object on moral grounds. They could, of course, have taken a different view. They did not realise that and are now seeing in specific cases—like in Durham or Stourbridge—is that women from sixth form colleges were coming forward and saying, “We don’t feel comfortable walking past that strip club when we’re going home after college; we just don’t feel comfortable with it”.

Q269 Paul Farrelly: I understand that but my question is about alternatives and in your experience have some councils tried to go down the sex encounter licence route and faced obstacles?

Ms Levêque: The problem at the moment is that lap dancing clubs are exempt from that regime because they hold a premises licence for regulated entertainment which is what we are trying to change. A sex encounter establishment is a venue where visual entertainment for sexual stimulation takes place, in other words a lap dancing club, yet they cannot fall under that category. Councils have not been able to use that extra power.

Q270 Paul Farrelly: Have any councils tried?

Ms Levêque: In Hackney the council was actually using that category until quite recently. It was not clear that lap dancing clubs were exempt from that category. They did not realise that and are now supporting the call for it to be made legal.

Q271 Paul Farrelly: I have a specific example from where I live in London in Hackney, just around the corner from the High Street, where there was an application for a lap dancing/pole dancing venue and they turned it down.

Ms Levêque: Yes, because it was an sex encounter establishment licence that the lap dancing club had to get and that is a really good example actually of how that regime is actually much more democratic.

Q272 Paul Farrelly: So they sought that licence, did they?

Ms Levêque: Hackney thought they had the power to use it but they lawfully do not. The lap dancing club and the solicitors they hired to represent them obviously did not cotton on to that. I went to that licensing hearing; it was Satchmo’s so I know which one you are talking about.
Q273 Paul Farrelly: You are saying that although Hackney went down that route, had the applicants got smart lawyers then they would have gone to the courts and said that the council should not only not have turned it down but could not lawfully do it. 

Ms Levêque: That is the advice we have from our legal experts. And actually Hackney Council was one of the many councils that responded to the government consultation saying that they do want extra powers because the powers they have at the moment are simply inadequate. Also it is interesting that the shadow minister for women’s office, who also did a consultation on this issue, got the same picture.

Q274 Paul Farrelly: Hackney did take a hard line and actually threw the ball back into the applicant’s court, so should it not be applauded and should other councils, from your argument, have done the same thing?

Ms Levêque: That situation was a case in which many residents had objections and they were not straight jacketed into the full licensing objections because the council believed it could use the SEE licence when, as I am saying, lawfully it could not. That paints a very different picture from other cases where the council simply has not been able to do that. In the City of London around the same time there was a case for City Golf Club where many residents objected but the council felt that it had no choice but to grant the licence and the club is due to open shortly. There has been a case recently in Plymouth where that has happened also. One thing I think is worth mentioning is that lap dancing clubs have access to superior resources. They can pay skilled licensing lawyers; they have licensing experts; they have access to superior resources. They can pay skilled licensing lawyers; they have licensing experts; they have access to superior resources. They can pay skilled licensing lawyers; they have licensing experts; they have access to superior resources. They can pay skilled licensing lawyers; they have licensing experts; they have access to superior resources. They can pay skilled licensing lawyers; they have licensing experts; they have access to superior resources.

Q275 Paul Farrelly: I just want to turn the argument round now. Could you not be accused of bracketing entertainers in the same category of people offering sometimes an illegal sexual services? For years, if you look in the stage magazine, there are adverts in there for entertainers and people knew, rightly or wrongly, when you took a job on a cruise ship to get your Equity card it quite often entailed taking your clothes off. My girlfriend was trying to get into Equity at the time actually so I know a lot about it because that is something that she would not get involved in. Equity, to a certain extent, rightly or wrongly, has given a certain acceptability to that. If you take a well-regulated lap dancing club—as I am sure we will hear from Peter Stringfellow in a moment—where the police go and where they employ their mystery shoppers (for all I know Peter might employ his own mystery shoppers) and may fire any girl on the spot who offers sexual services afterwards, do you have evidence as to the proportion of clubs where this sort of activity goes on so you can fairly say it is right and proper to bracket one type of entertainment with another?

Ms Levêque: I would say that that is beside the point because a sex encounter establishment is not a venue where you can buy direct sex; it is not a licence to sell sex, that would be a brothel and would be illegal. Claims that our proposal would see lap dancers labelled as sex workers are being put forward as a provocative tactic by opponents such as the Lap Dancing Association. At no point have Object or the Fawcett Society, our partners, ever suggested that this should happen. As an argument it is fundamentally flawed because the very definition, as I have just said of an SEE is not a licence to sell sex. There is absolutely no reason why lap dancers would be suddenly re-classified as sex workers and attempts to say that that would happen are just a way of trying to focus the attention back onto the women yet again and away from the customers and the club owners that run the industry.

Q276 Paul Farrelly: Then do we not come back to the argument of the police where the police find it difficult; what proportion of nudity is acceptable? If there is a topless scene at Drury Lane should that be included in the licence?

Ms Levêque: The 1982 Act includes the test of “to a significant degree”. A licensing authority would have to make a decision and it leaves it in the hands of licensing authorities to decide to make that judgment about “to a significant degree”. They have to decide (a) whether the entertainment offered is a sexual encounter; is it live, visual entertainment for sexual stimulation; and (b) is it to a significant degree. So is the venue putting on that entertainment to such an extent that it should have to get the licence is basically what would need to be asked. I think any reasonable licensing authority would not allocate that licence to situations which did not merit it. However, I would add that the SEE licence has existed in London for over 20 years and we have never seen cases of theatres being asked to get a sex encounter establishment Licence for a play. I know that has been put forward by the Lap Dancing Association as a reason not to go down this route. It just misrepresents reality because that licence is in existence at the moment. It is used for peep shows; it has never been used for plays.

Q277 Mr Sanders: What about male strippers and male performers? I do not just mean the glossy Chippendales; we do read articles about fairly sleazy male performances. How do you treat them? Do you treat them differently?

Ms Levêque: To come back to the definition, it is very clear that a venue where live visual entertainment for sexual stimulation is happening then they would come under that category, but I would say it is a bit
of a red herring because the dynamics are very different and in terms of numbers you are talking about a tiny, tiny minority of the industry.

**Q278 Mr Sanders:** Surely you have to look after minorities. As a matter of equality surely you would have to treat it exactly the same way.

**Ms Levêque:** Of course, yes. That is why I am saying it would come back to the definition of an SEE. If people wanted to have a say in the licensing of such a venue then they would be entitled to their say, which is what we are calling for with our proposal that lap dancing clubs should have to get a premises licence and a sex encounter establishment licence. If people have concerns about male lap dancing clubs they can bring those concerns up.

**Q279 Mr Sanders:** So if it was not in a permanent club environment but was ad hoc performances in another venue, how would you tackle that?

**Ms Levêque:** It comes back again to what I was saying earlier about “to a significant degree”. If a venue is putting on performances of that kind on a regular basis then logically they would be required to get a sex encounter establishment licence.

**Q280 Mr Sanders:** How would you define “regular”?

**Ms Levêque:** Why would you need to define it? It does not matter if it is male or female performers that are performing the activity. In terms of a licensable activity it is the nature of it that is the important fact; it is not the gender of the person who is doing it.1

**Chairman:** We need to move onto our next session. Can I thank both of you very much.

---

1 *Note by witness:* I believed Mr Sanders had said “gender” not “regular”.

---

**Memorandum submitted by Peter Stringfellow**

**INTRODUCTION**

I have been involved in the late-night leisure business for 46 years and have operated Stringfells in Upper St Martin’s Lane since 1980. In the 1990s, I saw an opportunity for a well managed Gentlemen’s club, similar to one I had run highly successfully in New York, to offer striptease in a sophisticated, well policed, and attractive environment. Accordingly, I set out obtaining the necessary consents and permissions from the relevant local authority, in this case Westminster, which took me many years and a great deal of time and cost. My premises in St Martin’s Lane have successfully operated since that time, with the support of the relevant local authority, residents and the police. Indeed, the good practices that I have forged and developed have become best practice in Westminster and elsewhere.

I also operate another club in Wardour Street, W1. Both venues are located in substantially commercial areas. Both of my clubs are purpose built and laid out for tableside dancing and both include substantial restaurants providing high-end cuisine and alcoholic drinks but only at premium prices. There is no discounting and members of the public who wish to enter either establishment have to pay a minimum entrance charge of £20, unless they are a member or intend to dine at the club.

My management have worked with me in some cases for over 30 years. My two clubs employ some 130 full-time staff and additionally I have a pool of around 400 dancers. I must have at least six registered door supervisors on duty at any one time to ensure that the tableside dancing is provided in accordance with the licence conditions. We have an extensive closed circuit television system in place to ensure good order throughout the clubs. My clientele are mature individuals, both male and female, who like to come to a civilised environment and many come for dinner in the restaurant. The door staff have a very proactive approach to ensuring that nobody enters the premises who are not suitable, either in relation to sobriety, dress or demeanour.

All my dancers are self-employed. They are interviewed and vetted individually by a senior member of staff. All have to provide at least two types of identification and sign a set of working conditions which they are obliged to adhere to. Any departure from these conditions results in their contract to work at the club being immediately terminated. All the dancers enjoy working at the Club and are, of course, under no pressure to do so.

**HISTORY OF THE LEGISLATION AND THE CURRENT EFFECT**

The London Government Act 1963 which was in force until November 2005, required premises to apply for a “music and dancing” licence to provide any form of dancing, including that performed by persons nude or partially nude. A similar provision applied in respect of premises outside London under the Local Government (Miscellaneous Provisions) Act 1982.

Many councils, including Westminster, had a specific condition contained in the Rules of Management, which applied to all premises which were granted licences which prohibited nudity or partial nudity without the consent of the council. This was commonly known as “Rule 4” and if you wished to disapply that
condition, you had to apply to the relevant local authority for what was called a “Rule 4 waiver”. That meant that any premises operating in Westminster and other local authorities that had such a Rule of Management had to have a waiver before providing nude or partially nude entertainment.

The Licensing Act 2003 required the holders of all licences which allowed the sale of alcohol, regulated entertainment or late-night refreshment to apply for “conversion” of their licences under the Licensing Act 2003. Where premises had the benefit of a music and dancing licence under the old regime, with or without nudity, the Rule of Managements were automatically “grandfathered” onto the converted Premises Licence when that came into force in November 2005. Therefore, in relation to converted licences, those with a Rule 4 restriction carried forward the prohibition on having nudity or partial nudity. Similarly, those with a Rule 4 waiver carried forward the benefit of having the ability to provide nude or partially nude entertainment.

As I mentioned above, I have two licensed premises, one in Soho and one in Covent Garden. The Covent Garden premises have the benefit of a Premises Licence, which was converted under the transitional provisions of the Licensing Act 2003. This has the benefit of a Rule 4 waiver, so as to allow the provision of striptease and similar entertainment.

In relation to Soho, the premises previously had the benefit of a music and dancing licence. However, when I took on the premises in 2006, I decided to apply for a new Premises Licence under the new regime so as to regulate and restrict some of the activities being provided at the premises, as they had been previously operated as a rather rundown and problematic nightclub.

I wanted to apply afresh under the new licensing regime so that the local authority and police could agree appropriate operating conditions for the way forward, because I was advised the change was so substantial that the Council would prefer a new licence, rather than a variation of the existing licence. In doing so, I reduced the capacity of the premises from 900 to 600 so that the local authority and police could agree appropriate operating conditions for the way forward. The Council had a policy against new licences allowing nudity and I had to prove an exception. Importantly, the application specifically referred to striptease, as did the Licence granted by the Council which specifically allowed it.

Under the Licensing Act 2003, an application is still required to allow the performance of a dance and the facilities for dancing. Obviously, the provision of tableside dancing falls within one of these licensable activities. However, being nude or partially nude is not licensable in itself. Therefore, if one was to apply for a new Premises Licence under the new licensing regime for music and dancing and did not make any specific reference in the application to nude or partially nude entertainment, local authorities apparently have not been implying a condition that striptease should be prohibited. Therein lies the problem.

What should have happened when new licences were granted under the new regime is that local authorities should have taken from the operating schedule any absence of reference to nudity as being consistent with the operating schedule and then automatically imposed a no nudity condition. Under the 2003 Act, local authorities have adequate powers to impose such a condition, should they so choose, and many are now doing so.

I understand that it is argued on behalf of those that support a change in the law that local authorities are only empowered to impose such a condition if there are relevant representations. This is incorrect as recently identified by local authorities, such as Westminster and Tower Hamlets, which are now automatically imposing no nudity conditions, whether or not there are relevant representations and where it is consistent with the operating schedule (in other words where it is not mentioned).

**EFFECT OF A CHANGE IN LEGISLATION**

I understand that some have proposed to change the 1982 Act to require all establishments which have nudity or partial nudity to be licensed as Sex Encounter Establishments, regardless of whether they have a Premises Licence.

Firstly, I think that any such changes are unnecessary and disproportionate. The licences I hold contain numerous conditions which police the premises to a very high standard. Both of my premises have always been extremely well managed and have never been the subject of any applications to either local authority or the magistrates’ court for a revocation of the licence or a review under the new licensing regime.

If I were required to apply for a new Sex Encounter Establishment Licence, I would have the uncertainty as to whether such a licence would be granted. In addition I would be required to pay an annual fee of at least £29,100 per club (as currently payable in Westminster), such a fee being difficult to justify in terms of enforcement cost. If one or both licences were refused, one or both of my business would have to cease trading and I would lose everything that I have worked for all of my long working life.

The 1982 Act has to be adopted by individual councils. If not adopted, any change would have no effect. Some councils have not adopted the existing legislation and may not adopt it with any changes. Furthermore, having a separate licensing system is inconsistent with the Government’s wishes to have one licensing system for all places of resort and entertainment. I am advised that the 1982 Act was not ideal for easy implementation (hence its partial repeal in favour of the 2003 Act) and does not give residents the same protections as the 2003 Act does. Most local authorities will have a “quota” in relation to the amount of such establishments that they have in an area. For example, in Westminster, only eighteen sex encounter
premises are allowed in Soho. Whilst I support the need to prevent the proliferation of such establishments, particularly those badly managed, the risk of having to apply for a new licence, when I have been operating perfectly properly and with a legitimate expectation, is one almost beyond comprehension.

A Way Forward

Whilst I certainly recognise that some regulation needs to happen in this area to ensure that establishments do not open in inappropriate locations and with insufficient operating requirements, I do not believe that requiring all establishments to apply retrospectively for a sex encounter licence is necessary or proportionate.

If all local authorities imposed a “no nudity condition” as a result of all new licence applications that would close any loophole that currently exists. In respect of those premises which are mismanaged and badly operated already, with licences either granted under the old or new licensing regime, such operators should be prosecuted or review proceedings brought by the relevant enforcement authority. For example, having seen the television show Dispatches, where premises have a “3ft rule” and that condition is being obviously breached, those responsible should be prosecuted. You do not need to change the law to close down badly run premises.

However, I can see that there remains a small loophole in respect of those premises which were granted a new licence under the new licensing regime and which were not made the subject of a Rule 4 or similar condition upon such licence being granted, due to a lack of understanding by Councils about their powers. I accept and agree that there must be a pressing case to retrospectively require that all such premises be licensed. However, in my respectful view, the Government has to carry out a balancing exercise for existing businesses which have a licence permitting striptease and have gone through the time, cost and effort of obtaining such consents.

Whilst some licences have been granted and can be utilised as such under the new licensing regime, to require properly operated establishments such as my own to reapply for a licence at the risk of such not being granted is unduly disproportionate in the circumstances. At the very least, the Government should consider a position where those premises operating with licences which already specifically allow striptease entertainment are exempted from any proposed amendment to the existing regime. One way of doing this would be to exempt those premises which already have a Premises Licence which specifically authorise striptease. Finally, the thought of my clubs being called “Sex Establishment Premises” is completely abhorrent. What message this would convey to my customers I cannot think! My final plea is please don’t use a sledgehammer to crack a nut. I have worked long and hard under hard financial conditions to operate and control my two venues, a change in the law will make it even more difficult and uncertain to do so in the current climate.

November 2008

Memorandum submitted by The Lap Dancing Association (LDA)

“THE REAL BODY OF EVIDENCE”

Exploding the Myths Around the Lap Dancing Industry

The Lap Dancing Association is the only established trade body representing the UK’s responsible and professional lap-, pole- and table dancing club operators. We represent a third of all lap dancing clubs in the UK. The LDA’s aim is to promote the highest standards of professionalism and responsibility towards our staff, dancers, customers and local communities.

You will be aware that the licensing regime for lap dancing clubs has recently been subject to political and media criticism—in particular the degree of proliferation and the level of scrutiny clubs are subject to. Campaigns by feminist groups are based in a series of misleading myths about the industry. This brief seeks to clarify the situation.

Myth 1

“Lap Dancing Clubs are licensed in the same way as coffee shops”

This is simply untrue. Unless they serve refreshments after 11.00 pm coffee shops don’t even need a licence. Lap dancing clubs on the other hand are covered by the Licensing Act 2003. The Act introduced one type of licence to replace the previously required six forms of generic licence. This change was implemented specifically to introduce more effective controls on premises’ licensable activities via local authorities’ new power to impose individually tailored permissions. Since the implementation of the Act, over 170,000 individually tailored permissions have been implemented on licensed premises, with conditions appropriate to the risk and nature of the business being applied.
Those applying for “regulated entertainment” under their premises licence are subject to rigorous scrutiny and a public consultation process. Indeed, premises must also tick Box N on the licence application to state their intention of offering entertainment of an adult nature. Premises licences are tailored to the activities that will be offered by each venue, using a clearly defined operating schedule. This sets out how lap dancing clubs will comply with the four objectives of the Licensing Act:

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

A lap dancing club’s licence is tailored to the needs of the business and carries specific conditions, many of which have been proposed by the operator. Some examples of licence conditions include:

- licensed door supervision;
- strict age-related admissions policy;
- CCTV requirements; and
- nature of the entertainment eg partial nudity only.

The Lap Dancing Association has a code of conduct for operators and dancers which can also be used by Local Authorities as model conditions on a licence.

The reality is that regulation and restrictions on offering a latte or a lap dance are poles apart.

**MYTH 2**

“Café style licensing means local authorities and local people have little or no say over where or how many clubs set up”

This again is simply untrue. Concerns about need or whether a new club is appropriate for a local community are, first and foremost, considered under the local planning regime. Local authorities have almost unbounded discretion to grant or reject an application. In considering planning permissions, they also have the ability to adopt local plans setting out policies in respect of certain types of licensed premises, including lap dancing clubs. Additionally, nightclubs are categorised a “sui generis” under the Use Classes Order in planning legislation. This ensures that any operator wishing to turn their premises into a nightclub must undergo a fully consultative planning permission process. Obtaining planning permission is by far the biggest hurdle operators face when opening a new lap dancing club. Many applications are flatly refused at planning stage.

In addition, the Licensing Act 2003 introduced a right for residents to oppose an application, complain about an existing operator and call for a review of a licence. Contrary to what is claimed by the Fawcett Society, this right is not restricted to those living within 100m of an outlet. The Act does not define any vicinity; residents need only demonstrate that they are affected by an application or outlet. Local residents are able to object to any application on the grounds that it does not meet one or more of the four licensing objectives. Local authorities can only take such objections into account. It is not in the local authorities’ power to refuse an application on the grounds of subjective moral objections.

This was a very significant change from the previous 1964 Act. A single objection can halt a licence application in its tracks and a single complaint can lead to the revocation of the licence. By way of example, in a recent case in Durham, a Council ignored objections from local residents and the Magistrates Court reversed their decision, showing how effective and influential local complaints can be.

The reality is that planning and licensing restrictions give local authorities and local communities full powers of consultation, complaint and control.

**MYTH 3**

“There has been massive expansion and normalisation of the lap-dancing industry since the Licensing Act came into force”

The first Lap Dancing Club in the UK was opened in 1995. Industry figures for this year show approximately 150 dedicated lap-, pole- and table dancing clubs across England and Wales, which in fact represents very gradual growth, in the context of a growing hospitality industry. As set out above, the implementation of the Licensing Act 2003 has not made it easier to get a licence for a lap dancing club. In fact the controls in place are more rigorous than the former regime.

The relatively small growth in lap dancing clubs should also be viewed within the context of an expanding and mature UK leisure industry. There are approximately 57,000 pubs and bars across England and Wales. The reality is that the lap dancing industry is a small but vibrant part of the UK entertainment industry that has grown steadily. It is worth noting that official licensing statistics do not separate out lap-, pole- and table-
dancing clubs from general pub, bar and club industry statistics, meaning there is no way for Object and Fawcett Society to substantiate their claim that the number of lap dancing venues has “doubled” to 300 across the UK since the implementation of the Licensing Act 2003.

The reality is that generating fears of a “massive expansion” supports the case for those with a moral objection to the very existence of the industry. Such subjective assessments can and should have no place in the regulatory regime for a legitimate industry.

**MYTH 4**

*Lap dancing clubs are part of the commercial sex industry*

Lap dancing clubs are a small part of the vibrant UK leisure and entertainment industry. They are not sex encounter establishments. Our performers are financially independent, self-employed women. They are not sex workers.

LDA member clubs have “acceptable behaviour standards” for customers and invest in CCTV and licensed security staff to ensure high standards of management. Each performer is required to observe a rigorous dancers’ code of practice.

We do not condone illegal activity. Any demand for sexual services from a customer will result in eviction from the premises. Performers are clearly warned that making any inappropriate arrangements will lead to dismissal from the Club.

The reality is that, while lap dancing is a sexy industry, sex is not for sale.

We would also cite that on average, our clubs derive 70% of turnover from sale of alcohol, and 30% from dances. The performance of lap dancing is ancillary to alcohol sales.

**MYTH 5**

*Requiring lap dancing clubs to have an additional Sex Encounter Establishment Licence (SEEL) would give local authorities greater control*

There is a campaign calling for the “reclassification” of lap dancing clubs. This is in itself a myth. The imposition of a Sex Encounter Establishment Licence (SEEL) regime would not constitute a “reclassification”, but rather a secondary licence and additional layer of regulation.

In reality, an additional SEEL licence would do nothing to increase local authorities’ power to control the operation of and activity within lap dancing clubs. It would leave existing bad practice and irresponsible operations untouched. The only thing a SEEL regime would do is to give local authorities the power to refuse outright an application for adult entertainment provisions.

Local authorities already have considerable powers to regulate the opening and operation of lap dancing outlets, and need to be made more aware of the full extent of them.

The SEEL was introduced under the Local Government (Miscellaneous Provisions) Act 1982. Its purpose is to regulate those establishments offering entertainment of an adult nature that do not sell alcohol, such as sex cinemas and sex shops. As such premises do not sell alcohol, they do not require a regular premises licence and therefore fall outside of any form of regulation. The SEEL was therefore developed to provide regulation for these establishments.

When the SEEL regime was introduced, there was some discussion as to whether its provisions should be extended to cover adult entertainment provided in licensed premises. The matter was also raised during the passage of the Licensing Act 2003. Both times it was agreed that the licensing regime was the most appropriate mechanism for regulating this type of entertainment. Dual licensing was explicitly rejected.

While we very much share concerns about unregulated or inadequately controlled establishments, the LDA does not support current suggestions that lap dancing clubs should be required to hold an additional SEEL. Two licences would be an unnecessary and costly duplication of regulation for the established industry, which will not improve standards, help protect the dancers or prevent opportunistic pubs from offering unregulated strip nights. All of this can, however, be effected through the Licensing Act 2003.

The reality is that the imposition of SEELs on already licensed premises would involve huge practical problems for licensing authorities and operators, as a robust and detailed description of nude or partially nude entertainment would have to be drawn up. If not, the licence could inadvertently capture everything from traditional burlesque—made popular today by Dita Von Teese—to naked actors on stage in the theatre—like Daniel Radcliffe in Equus. Impromptu performances by stag-do strippers could also find themselves in breach of licence conditions.

Furthermore, the SEEL would simply cost operators an estimated extra £8000 per year to run their businesses in exactly the same manner as before, but under a bad name. Neither our clubs nor performers would accept the “sex industry” label.
MYTH 6

“Lap dancing clubs create no go areas for women and increase sex crimes”

There is no evidence to suggest that lap dancing clubs create no go areas for women, or increase sex crimes. Groups opposed to lap dancing clubs base this assertion on a one-sided small scale report in Camden, conducted by Lilith and Eaves Housing For Women. The report can in no way be held up as an independent, unbiased analysis of the impact of lap-dancing clubs. The author says “Of course it would be wonderful if strip clubs could be eradicated tomorrow”.8

The report associates increases in rape and indecent assault specifically with the presence of lap dancing clubs in the area, despite the fact that these licensed venues represent just 0.35% of the late night entertainment venues in Camden. Camden has approaching 2,000 pubs, 129 licensed entertainment venues; of these only seven are lap dancing clubs.

Metropolitan Police statistics in fact show that:

— Rape offences in Camden fell by 53% between 1999–2000 to 2007–08.
— Other sexual offences in Camden fell by 3.8% between 1999–2000 to 2007–08.
— Latest figures show that residents of Camden are less likely to be a victim of a rape or a sexual offence than residents in Westminster or Islington (boroughs used for comparison in the report).

The reality is that there is no evidence to suggest that there are significant problems relating to other forms of disorder, anti-social behaviour or public nuisance surrounding the operation of lap dancing clubs. Indeed, all the evidence points to the contrary. For example, analysis of Birmingham police call-out statistics reveals 14 incidents per lap-dancing club as compared to 77 per conventional nightclub.9

There is simply no evidence to demonstrate a causal link between the opening of lap dancing clubs and crime.

MYTH 7

“Lap dancing clubs do not comply with local authority obligations under the gender equality duty”

Gender Equality Duty requires Local Authorities to “proactively promote gender equality”. We can only assume that the anti-lap dancing campaigners are trying to suggest that granting licences to clubs where self employed women dance freely under their own volition is somehow discriminatory.

The reality is that this is clearly not true.

MYTH 8

“Lap Dancing objectifies women”

Objectification is an entirely subjective attitude and we simply support a woman’s right to do the job she wants. To suggest that women who are confident in their naked bodies are somehow anti-feminist is wrong, and sets the feminist debate back half a century. Dancers are self-employed and frequently financially stable individuals. There is an enjoyment and pride in their profession, for which they train and rehearse with great skill.

Our critics have obviously never visited a lap dancing club. The reality is that, if they had, they would realise that although the girls take their tops off, it is definitely they who wear the trousers.

November 2008

---

9 http://www.met.police.uk/crimestatistics/2008/2008_yend.htm;
   http://www.met.police.uk/crimestatistics/tables/fy99-00.htm
   http://www.met.police.uk/crimefigures/
   Research conducted by Bill Martland, Lap dance clubs and crime and disorder: Modern myths and reality, 2006.
**Witnesses:** Mr Peter Stringfellow, Club Owner, Ms Kate Nicholls, Secretary, Mr Simon Warr, Chairman and Mr Chris Knight, Vice-Chair, Lap Dancing Association, gave evidence.

Q281 Chairman: Good morning. Can I welcome representatives of the Lap Dancing Association, Simon Warr the Chairman, Chris Knight the Vice-Chairman and Kate Nicholls the Secretary, as well as Peter Stringfellow who is the owner of two clubs.

Mr Stringfellow: May I make a point? I am not part of the Lap Dancing Association and that is how I would like to be treated, just in case someone thinks we are altogether. I am here to represent my views.

Chairman: We understand, thank you. Paul Farrelly?

Q282 Paul Farrelly: Peter, you just heard me trying to explore some of the implications of the dual system of licensing and how people can or cannot take advantage of the different routes and also how it seems a little bit absurd to have peep shows regulated in one way and lap dancing clubs in another. Can I just ask you a straight question, why do you think the sex encounter licensing regime would be an inappropriate way to regulate lap dancing clubs, given some of the controversies and concerns we have heard?

Mr Stringfellow: I welcome that question, it is very direct and I think that is why we are all here really. Can everyone hear me because I could not hear properly over there? I am a bit deaf in the left ear but I still could not hear properly. However, I got the general gist of it, the lady does not like lap dancing. Number one, I will jump to how I would like to have finished this. My clubs are both in the centre of London. Westminster have been regulating my licences since 1980. I applied for the waiver of the number four licence to allow me to go into striptease in 1996. Westminster had a waiver which said “no nudity” on every licence that was applied for. I had to go to court and tell them that I wished to do nudity before a legendary chap called John Bull who allowed after a while—after many consultations and many meetings—to give me that particular waiver. May I say to everyone here that every council in Great Britain has that power. They still have the great power to do this. My clubs are both in the centre of Westminster. They have the power to put on all their applications from now on—please write this down—as of tomorrow morning, they have to have a policy and in their policy they say that all applications, whatever it is, like Westminster, carries a no nudity or partial nudity. That is the end of this problem. They do have this power. What they have done wrong is that a small minority of councils do not know their power. The 2003 law came in and it was put in in 2005. The problem was—and even Westminster missed it out for the first year—that the no nudity had been dropped and therefore now it is put back in. Westminster has not got more than it should have in lap dancing. By the way, this is not a terminology that I like, it is a derogatory term that is used by people who dislike it; my terminology is adult entertainment (and that covers everything) or in my case gentlemen’s clubs.

Q283 Paul Farrelly: It is used by the Lap Dancing Association.

Mr Stringfellow: As I said, I am speaking for myself. However, it is a terminology that is now in the Great British vocabulary and so be it. I do not like it, but so be it. So let us talk about lap dancing. All they have to do now when they go to court is to say “You know where you’ve said no nudity, I want to do nudity” and now they have to explain why. Up come the residents, up come the police, up come everybody else and then they go into the procedures that I have known since I have been in my clubs since 1962 when it took me ten years to get an alcohol licence for a disco at the same time. I am not going into history lessons here but it goes back many years, all objections regarding alcohol, dancing or whatever form of entertainment it was. They can do this. I have people behind me who have gone into this very carefully because I do not want to be quoted by the press and be made a fool of later on. The councils have this right if they wish tomorrow to say on every application, no nudity. If I wish to go into your area and your area says “no nudity” and I would like to open one, then I cannot.

Q284 Paul Farrelly: What happens then?

Mr Stringfellow: I will then go for an appeal and this now goes before magistrates. Then the due law takes over. It is the law. Even an appeal for a sex encounter would go to the same people. If I said “I’ve got to have a sex encounter and I’m turned down” I would appeal and go to the same people—which would be the magistrates—that I would have to go to now if I was turned down for a normal waiver of this no nudity. I agree, not everywhere should have a lap dancing club, there are places that should not have a disco, there are places that should not have music and dancing until two o’clock at their local club—I agree with all that—but I think the legislation was a correct piece of legislation in 2003. It has one or two little glitches which I think this meeting could help greatly. I would suggest that the government sends out, if anything, to the councils and I am going to give you a few little facts here. A letter was recently sent from the Home Office ministry, to every chief executive in each local licensing authority in the country asking for feedback on the control of lap dancing establishments, specifically whether licensing authorities felt they had sufficient power to control the growth in the number of such establishments.

Q285 Chairman: We are aware of that.

Mr Stringfellow: May I add, only 30% of the respondents responded and of that 30% only 25 said that they were content with powers. If you play with percentages, that means that 22% of all the councils were a little bit confused about their powers. Their powers are here; they can do it; it exists. We do not really need any more legislation; no more red tape.

Q286 Paul Farrelly: Just to be quite clear, what you are saying is that if those authorities firstly got their policies in place that they are allowed to do and,
secondly, understood their powers and the Act correctly, then it is not right and proper for them simply to cry wolf and blame the government.

Mr Stringfellow: I agree with that entirely, that is what I am saying. This is not a government problem. There is a minority—a significant minority at 22.5%—of councils who do not understand their powers. If, as from tomorrow, they look at their powers for every application whether it be for a café, a hotdog stall (as I have been told today), just put “Yes, you can have hotdogs but no nudity and no semi-nudity”. This problem is then solved and you people can go on to look at the other problems of so-called binge drinking (by the way, I have the answer to that if you are interested).

Q287 Paul Farrelly: That is very helpful.

Mr Stringfellow: May I bring this up because you mentioned it? This sex encounter, I am not a sex encounter club; I am a gentleman’s club, both of my clubs are multi-million pounds. I employ 140 full-time employees. Of the ladies who were talking, one was an ex-dancer: with all respect, that must have been a long time ago. My view is that I have 400 in a pool of dancers, that is now, not 20 or 10 years ago. They are ladies who dance now. Not one of them is here to say, “Excuse me, this is a terrible game we’re playing here”. Sex encounter I am not. Sex encounter licences in the West End are £30,000 per licence. For what are you going to stick that on me? For what and why? I do not deserve to be treated that way. My licences are correct and proper. I have applied for them correctly and properly. The colleague sitting behind me from “For Your Eyes Only”, nine up and down Great Britain; he has had many refused and walked away from them. He has nine and I have two in the centre of London which are correct and proper. They are controlled by the police and the inspectors from Westminster. I say, no, absolutely no; I am not a sex encounter club and I do not want anybody coming into my club thinking they are going to get a sexual encounter.

Ms Nicholls: We are very grateful to you for inviting us here today. We welcome the opportunity to talk to you and provide you with an insight into our businesses. They are ladies who dance now. Not one of our dancers here today give evidence to you but we do have some of our dancers here and we have accepted that in some cases the presence of a club has helped reduced levels of crime and disorder in the immediate vicinity. The 2003 Act was also designed to reduce the number of conditions on licences because all premises are subject to statute law.

Q288 Chairman: We were here; we heard that evidence.

Mr Warr: I think you get the picture, sir. I know from experience too that courts and local authorities have accepted that in some cases the presence of a club has helped reduced levels of crime and disorder in the immediate vicinity. The 2003 Act was also designed to reduce the number of conditions on licences because all premises are subject to statute law.

Q289 Chairman: Do you not accept this, that another legitimate group who are entitled to express a view and, if they feel strongly, object to an application should be the local community?

Mr Warr: We believe in community empowerment and we have something to say about that.

Ms Nicholls: Yes, local residents absolutely should have the right and we want to make sure that any time anybody wants to open a lap dancing club for the first time or provide adult entertainment for the first time, that that application is scrutinised and the local residents have a right to object and they do. The Licensing Act 2003 introduced that for the first time. We are not talking about a system that has been introduced in 2003 that has somehow made things worse; it has made things immeasurably better. 15% of all reviews of premises licences were introduced by residents. Residents can and do regularly object to normal applications. There is something that the government could do. A lot of local authorities have produced guides for their local residents to help them to object to licensing applications, to help them frame their concerns about operations according to the licensing objectives and the government could do that as well, it could provide that help and advice to empower local residents to make their representations.
Mr Warr: In other words, quite simply residents can object to current licences which are in force on current premises. There have been a thousand reviews from April 2007 to March 2008. 15% of those reviews were brought about by resident action; 50% of those reviews were brought about by the police.

Q290 Chairman: The problem is that if they object they have to do so under one of the four criteria of the Licensing Act. The fact that they may just not like the idea that they are living next door to a lap dancing club is not a legitimate objection.

Ms Nicholls: Those are legitimate objections. It is misdirected as to where those objections should be put. The issues that are raised about the character of a local area, amenity, residential concerns about the character and quality of life, those are all material planning considerations. The Licensing Act was set up to deal with the four broad—and they are very broad—licensing objectives. If you cannot frame an objection to an outlet according to one of those licensing objectives then you are actually accepting that you just have a fundamental objection to the premises. That should not have a part to play in an objective policy and decision making process.

Q291 Chairman: The planning regime does not allow you to object if there is a change of usage within an existing planning licence.

Ms Nicholls: It can do depending on what the change of use is. We do believe that the planning regime could be strengthened in that respect to make sure that adult entertainment is a separate category.

Mr Stringfellow: I do not agree with that. The idea of planning should be kept of this; this is a council licensing matter. Leave planning alone. It is a minefield and it is already chaotic. I have been involved in planning on two occasions and we are talking about years, not a matter of months, waiting for an appeal to come forward. It takes years. The minister of planning gets involved in it. It is not a matter of sitting in front of a committee of licensing people; planning is much more complex and we should not be involved with that problem. It is enough already.

Q292 Philip Davies: Can I get to what I consider to be the nub of this particular issue which is about whether or not you are sexual encounter establishments. You claim that you are not and that you do not want to be characterised in that sense. We have seen a whole range of things. We have seen articles in the Daily Mail; I think Amanda Platell wrote an article where she had been to visit a lap dancing club and spoken to the girls there. Her experience was different from the one that you say. We saw the Dispatches programme which highlighted the fact that there was sexual contact and sexual encounter taking place in some clubs. It may well be that Peter Stringfellow runs a very well run club and nobody will be making any comment on his particular club, but would you accept that there are some clubs out there that do not run to the high standards that he might insist upon in his club?

Mr Knight: We are not saying that there are no bad operators out there. There are bad drivers out there but you do not change the whole way that the driving licence is given; you deal with the bad drivers. Under the 2003 Act the police and the local authorities have the power to deal with any clubs that are breaking any of the four licensing objectives. The instance you are speaking of, if any of that was taking place within the premises then they would be breaking one of the four licensing objectives and the police could do something about it.

Mr Sanders: Unless you have something like Dispatches how do you know about it?

Q293 Philip Davies: If these dances are taking place in a back room with just the customer and the girl that is doing the dancing, it is very difficult to regulate what is going on because by definition there are only two people in the room.

Mr Warr: Therein lies perhaps one of the biggest problems, the fact that not enough people understand the business blueprint and the operation of a club. Most people understand how a pub works or how a corner shop works. Actually in our premises they are not sexually stimulating; it would be contrary to our own business plan if they were.

Q294 Philip Davies: So you are saying that the purpose of a lap dancing club is not to be in any way sexually stimulating. Most people would find that a rather incredible statement.

Mr Warr: Then you need to go to a club because the purpose of a club is to provide entertainment; it is to provide alcohol; it is a place of leisure. All right, the entertainment is in the form of nude and semi-nude performers, but it is not sexually stimulating.

Q295 Philip Davies: So if I were to do a poll of 100 customers coming out of a lap dancing club and said, “Did you find that in any way sexually stimulating?” you would say that I would find a big, resounding, fat zero. On that basis you will probably have a lot of dissatisfied customers.

Mr Warr: That is a valid question, how do you measure sexual stimulation and what is the definition of sexual stimulation?

Mr Stringfellow: From my many years of experience, of course it is sexually stimulating, so is a disco, so is a young girl flashing away with her little knickers showing. That is sexually stimulating. So is David Beckham laid out advertising Calvin Klein, he is sexually stimulating. So are the Chippendales, that is sexually stimulating. That is a great show, by the way, I’ve been to see it. I was the only male there out of 3,000 females. It was a wonderful show. Of course it does have some form of sexual stimulation, but I think what my colleague over here is trying to explain is that it is not 100% sexual, “My god, it’s driving me mad, I’m going to get divorced and find a dancer to live with for the rest of my life”. It does not go on like that. In our environment, a dance lasts three minutes; clothes are on and off before you have blinked; it has a lot more to do with personality; it has a lot more to do with the ambience of the club and the male environment.
Ms Nicholls: Can I just add here that whether it is sexually stimulating or not seems to me to be entirely beside the point. The point is, what is the appropriate regime for regulating this industry, an industry which provides entertainment, which opens late at night, which sells alcohol and which also happens to have a sexy product? Only 30% of the turnover is derived from the dancers; there are a lot of other bits to the business than just the dancers that needs to be regulated. Is it appropriate to put it all within the Licensing Act or do you need another licence on top of it? I would answer no.

Q296 Philip Davies: Would you accept what Nadine said in the first session, that there is an over-supply of women in the clubs and therefore some do not get as much trade as others and some of them find it very difficult to earn money. That kind of regime encourages them to perhaps go a bit further than even the club owner would want them to in order to secure a fairer proportion of customers, and that over supply is intended to get some of the girls to go further than you might yourselves want them to.

Mr Warr: No, we would absolutely dispute that. In fact, some of the comments made were to the point of being vexatious. Quite simply, all performers are independent contractors. They come and go as they please; they dance with whom they want. Contrary to what you heard this morning, Peter, Glen, myself as operators do not hold people against their will. They are in our premises to earn a legitimate and a good living. The fact of the matter is that it is the most purest form of supply and demand. If there are not enough customers then the dancers will simply go elsewhere.

Mr Stringfellow: That, may I point out, is the absolute truth. The dancers go to be paid. If the money is not there then they will move on. You did bring up something about the ratio of customers to females. There is no discothèque that I know that is beyond the 50%. If you went to 60% or 70% male as opposed to female in the discothèque you are going to have problems. You are going to have violent problems. I have been there. I know. A ratio of 50-50 is reasonable because that is what discothèques are. You do not find a discothèque full of males unless it is a gay one, and they are pretty good too. If it is a mixture, they go to dance with women; they want to see women dance. There is a sexuality in normal discos, there always has been. You miss out the disco, you miss out the sex side of it, you are going to fail. What we have here is somewhat similar, to what you heard this morning, Peter, Glen, myself as operators do not hold people against their will. They are in our premises to earn a legitimate and a good living. The fact of the matter is that it is the most purest form of supply and demand. If there are not enough customers then the dancers will simply go elsewhere.

Mr Stringfellow: I do not mind being told; I ramble on sometimes.

Q298 Mr Sanders: It seems from the evidence and what we have picked up that there are different types of clubs. There is the gentlemen’s club which Mr Stringfellow has told us a great deal about this morning; there are your well-run establishments (your claimed well-run establishments) and there are the examples which are closer to brothels than to dancing establishments. You say it is not in the business model to be like that, but if you are trading at the margins and you have young women who are self-employed—not employed by you—who need to make as much money as they can, there may well be an opportunity for a contract to be negotiated with a customer that goes way outside of what that premises was licensed for. I come back to Philip’s point, how do you prevent that from happening? How do you police that? Is it not impossible to police unless you have a policeman in every club or you have CCTV cameras operating throughout the club which can then periodically be viewed by some authority? How would you police them?

Mr Warr: We do have CCTV in operation; we have to keep the CCTV for a period of 28 days after each evening, so for nearly a month on a rolling basis. We have a high ratio of door supervisors to customers; that is simply to ensure the safety and well-being of dancers and performers alike.

Q299 Mr Sanders: Are clients aware that there is CCTV throughout?

Mr Warr: Yes.

Q300 Mr Sanders: And there is no hiding place.

Mr Warr: There are notices throughout the building saying that CCTV is in operation. To answer the question, the way to stop bad practice and part of the reason the Lap Dancing Association was set up is to create best practice and to create best practice throughout the industry. In this industry every local authority can apply their own conditions. Therein lies the irony that every authority has different conditions on lap dancing. We, as an association, have a solution in terms of conduct which is to offer a generic set of conditions for all clubs. Not everyone may agree with that and I accept that, however, as a benchmark and as a starting point borne out of best practice, we believe that is a good way forward.

Ms Nicholls: Just picking up on the policing, there are essentially two ways in which it is policed. The first is self-policing and I do not think that ought to be underestimated. Every licensed premises has a designated premises supervisor whose job it is to make sure that that premises complies with the laws, not just the licensing laws but with the law, and his or her personal livelihood is at stake if they mess up and if they do not do that. So there is a self-policing mechanism. Secondly, there are the police and the licensing authorities and because lap dancing clubs open usually late into the night they are categorised as high risk premises therefore they will be subject to a more rigorous inspection regime that would apply to most licensed premises. Usually that would be at
least every six months by the police and six monthly by the licensing authorities. Those will not be formal inspections, they could be ad hoc. So there is a very strong, formal policing mechanism for making sure that those kinds of bad practices do not happen.

**Mr Warr:** You also mentioned earlier about mystery shoppers. In fact throughout my premises we have mystery shoppers. We have mystery shoppers who go into the premises once a fortnight. The purpose of the mystery shopper is to do exactly what you are asking and that is to interrogate the integrity of the business.

**Mr Stringfellow:** You are quite right, there are bad clubs. There are bad restaurants, there are bad films, there are bad discotheques, there are bad clubs and there are bad lap dancing clubs. It is up to the local authorities and the police to close them down if they are as bad as we are suggesting here. That is their job and I am sure that they have the laws to do that. We do not call them shoppers—that reminds me of Tesco—we have spotters every two weeks, we have incident books every evening. No discotheque has these; no pub has incident books that we know about. Anything relating to a customer and a dancer goes into these books and is there for inspection by the inspectors from Westminster or the police at any time. You would be amazed at how many cameras we have. CCTV is all over both clubs and the high definition lighting, however dark the area is, it looks like daylight. That is there for inspection, only to be used—let me give this as a freedom thing—for incidents or checking of the dancers and their conduct; it is not to be used to view have some fun with. To reiterate, we are more—I have been in discotheques since 1962—rigorously controlled than any disco I have ever been involved in, and that is the truth.

**Ms Nicholls:** I have one final point, if I may. These are all valid concerns and we all share the desire to root out irresponsible and bad practice. There is nothing in a sexual encounter licence or an additional licensing regime that would change any of that, not one thing. The answer lies in tightening the Licensing Act and making sure that the Licensing Act powers are enforced.

**Chairman:** Thank you very much, we must move on.

---

**Supplementary memorandum submitted by the Lap Dancing Association (LDA)**

I am writing to you in your capacity as Chair of the Culture, Media and Sport Select Committee. Following the Lap Dancing Association’s (LDA) recent oral evidence session to the Committee’s inquiry into the 2003 Licensing Act, I would like to restate our views on the suitability of the Act to regulate lap-dancing clubs. As you will be aware from your own discussions with Phillip Davies, I would also like to extend to you, along with your other colleagues on the Committee, an open invitation to visit an LDA member club in the New Year.

Much of the current debate surrounding our industry has concentrated on the suitability of the 2003 Licensing Act to deal with concerns about lap dancing clubs. It is our belief that the Act remains the best means of doing so. Local communities should have the freedom to determine whether it is appropriate for a club to open their area and that the police should have the power to object to clubs. Furthermore, we are keen to see the universal application of the highest standards in clubs across the board. We firmly believe that the best way of ensuring that these objectives are met is through the 2003 Act.

To that end, we are proposing a series of simple amendments to the Act and the planning regime. These changes can be made quickly and easily through secondary legislation. This would not only quickly and easily through secondary legislation. This would not only address and resolve residual concerns about our industry, but also improve standards of management, better protect dancers and increase the effectiveness of regulation of our sector. LDA proposes that:

1. **There should be a separate category of regulated entertainment for clubs in the Act.** This would mean that applications are clearly identified and would reinforce measures to prevent existing licensed premises offering adult entertainment without proper scrutiny.

2. **There should be an amendment to Licensing Guidance.** This would allow a standard “no nudity” clause to be applied to licences that do not specify at point of licence application that they will offer adult entertainment.

3. **There should be an amendment to the current planning regime’s “Use Classes Order”.** This would separate adult entertainment premises from restaurants, bars or nightclubs under a sui generis arrangement, ensuring outlets wanting to provide adult entertainment for the first time would have to seek planning permission.

4. **The Government should publish new guidance for community objections.** The Government should take steps to ensure that local communities are aware of their right to object to clubs, as well as providing support, advice and assistance on how to properly and effectively frame objections.

5. **A statutory code of practice should be introduced.** The new Policing and Crime Bill could introduce a code of practice, similar to that planned for all alcohol retailers, in order to ensure adequate regulation of standards. We suggest that the LDA’s own code be used as a blueprint for this.
We agree that there are certain circumstances in which granting a licence to provide adult entertainment would be inappropriate and support residents’ right to speak out if they feel that this is the case. However, the most effective vehicle for securing those rights is the 2003 Licensing Act and, if adopted, our suggested amendments will ensure all communities are empowered.

I hope that you have found the LDA’s contribution to the Committee’s inquiry both informative and helpful. We feel that that contribution can be furthered still by a site visit by the Committee to help you gain a full and clear understanding of how our members can serve as a model for well run and well regulated lap dancing establishments across the country.

December 2008

Memorandum submitted by Noctis

ABOUT NOCTIS

Noctis represents businesses operating in the UK late night economy. We draw our membership from night clubs, bars, live and student venues. We have been established since the 1950s and were previously known as the Association of British Ballrooms, the British Entertainment and Discotheque Association and the Bar Entertainment and Dance Association. In February 2008 we changed our name to Noctis after an extensive consultation with our committee and our members.

Noctis (in all its incarnations) has always been an organisation which has engaged constructively with government, police and local authorities. We aim to find workable partnership solutions to the many challenges which are part of the vibrant late night market. We believe that the late night sector is an extremely important and valuable asset to the UK economy.

INTRODUCTION

The Select Committee has asked for comments on a number of different issues. We have restricted our comments to those areas where we represent members and have not responded to those areas (sports and social clubs) where we do not have an interest. We have attempted to describe the current landscape as far as late night operators are concerned. It is clear that some of the factors which may affect levels of disorder are as a consequence of the Licensing Act, although it is clear too that the Licensing Act is but one of a number of different factors.

In this submission, as a consequence, we have attempted to break down a number of factors which have all elicited negative impacts on the market over the almost three years since the Act went live. At the same time, the last three years have also seen an unprecedented level of both partnership and CSR initiatives. We feel, for the sake of fairness and accuracy, this should be noted too.

QUESTIONS

Has there been any change in levels of public nuisance, numbers of night-time offences or perceptions of public safety since the Act came into force?

The great difficulty with the scope of the question is that it asks for comment on a subject (the Licensing Act) which is only one part of complex and inter-connected jigsaw which can lead to disturbances. In this submission we have attempted to break down a number of factors which have all elicited negative changes in the market over the almost three years since the Act went live.

BELLOW COST SELLING

One of the features of “liberalising” licensing hours is that it has fostered an increase in pre-loading of off trade alcohol. It is true that pre-loading has been a factor in the night out for many years before the Licensing Act, but inevitably the Act, since it has given longer hours to some venues, has encouraged customers not to venture out until later. This has meant that customers are generally arriving at late night venues one to two hours later than before the Licensing Act 2003.

Obviously the late night venue (by its very nature) has always been the final destination for the evening and our sector has, for decades, been the most challenging in terms of managing difficult customer behaviour. Now however, according to CGA statistics people are consuming a greater number of (home poured) measures and this is making the management of the door a more difficult than ever. Often the late night venue is the unfortunate recipient of these individuals—people who will not be admitted to the venue, but who nonetheless present problems and may commit offences. The difficulty for some late night venues is that they may be targeted as a problem venue for issues which are entirely beyond their control.
One thing which is abundantly clear (as can be seen from the Competition Commission’s report) is that the scale of below cost on-trade selling is enormous.

Table 5

BELOW COST SALES OF ALCOHOL DURING THE WORLD CUP BY THE FOUR LARGEST RETAILERS

<table>
<thead>
<tr>
<th></th>
<th>ASDA</th>
<th>Morrisons</th>
<th>Sainsbury’s</th>
<th>Tesco</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Beer and lager</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of SKUs</td>
<td>5.0</td>
<td>2.0</td>
<td>16.0</td>
<td>9.0</td>
</tr>
<tr>
<td>Volume (millions of units)</td>
<td>1.8</td>
<td>0.1</td>
<td>0.6</td>
<td>2.1</td>
</tr>
<tr>
<td>Value (£ million)</td>
<td>12.9</td>
<td>0.7</td>
<td>5.3</td>
<td>15.1</td>
</tr>
<tr>
<td><strong>Wine and spirits</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of SKUs</td>
<td>0</td>
<td>0</td>
<td>13.0</td>
<td>1.0</td>
</tr>
<tr>
<td>Volume (millions of units)</td>
<td>0</td>
<td>0</td>
<td>0.6</td>
<td>0</td>
</tr>
<tr>
<td>Value (£ million)</td>
<td>0</td>
<td>0</td>
<td>1.9</td>
<td>0.1</td>
</tr>
</tbody>
</table>

Source: CC analysis

Note:
1. This table has been updated since its original publication to better match the time period of the sales between retailers. The period of sales, covered by this table, is based on the period of the World Cup but is not exactly matched between each retailer due to individual financial reporting techniques.
2. The value quoted is the difference between average selling price and average gross cost of the SLU over the relevant period.

What is also clear is that whilst the market is increasing year-on-year for the off-trade, it is declining in the on-trade (as this CGA graph detailing on-trade visit shows) with a trend towards one big night out a week becoming increasingly the norm.

![Graph showing on-trade visit frequency](image)

Refusal Figures

One UK high street pub company during August 2008 checked 89,234 people and refused service to 5910 people who were drunk and 4,908 refused as underage. One high street bar operator refused (or removed from the premise) over 23,000 people during August 2008. One UK night club operator with over a dozen venues refuses on average 3,900 people a week for being drunk, underage (or both). One Scottish operator in one venue over the period of one month earlier this year recorded these refusal figures:
<table>
<thead>
<tr>
<th>Period</th>
<th>Thursday</th>
<th>Friday</th>
<th>Saturday</th>
<th>Sunday</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No refused/ no in/%</td>
<td>No refused/ no in/%</td>
<td>No refused/ no in/%</td>
<td>No refused/ no in/%</td>
<td>No refused/ no in/%</td>
</tr>
<tr>
<td>9</td>
<td>114/626/18</td>
<td>444/1,025/43</td>
<td>874/3,254/27</td>
<td>48/654/7</td>
<td>1,480/5,559/26</td>
</tr>
<tr>
<td>10</td>
<td>198/547/36</td>
<td>312/989/32</td>
<td>477/2,965/16</td>
<td>87/784/11</td>
<td>1,074/5,285/20</td>
</tr>
<tr>
<td>11</td>
<td>132/399/33</td>
<td>321/899/35</td>
<td>451/3,147/14</td>
<td>120/752/16</td>
<td>1,024/5,197/19</td>
</tr>
<tr>
<td>12</td>
<td>210/789/26</td>
<td>621/1,463/42</td>
<td>524/3,654/14</td>
<td>87/784/11</td>
<td>1,074/5,285/20</td>
</tr>
<tr>
<td>13</td>
<td>189/458/41</td>
<td>587/1,324/44</td>
<td>987/4,874/20</td>
<td>41/547/7</td>
<td>1,804/7,203/25</td>
</tr>
<tr>
<td>Total</td>
<td>837/2,819/29</td>
<td>2,285/5,700/40</td>
<td>3,313/17,894/18</td>
<td>391/3,533/11</td>
<td>6,826/29,946/22</td>
</tr>
</tbody>
</table>

On the Friday nights at the above venue, the door staff are refusing 40% of those who present themselves. This very high figure is partly because once refused, some people will re-join the end of the line to try again, since there is effectively no sanction against them not to do so. One London club operator says his refusal rates are nearer 1 in 17 over the last few months, although he states that he is refusing many more drunks, than two years ago.

These refusal figures are generally reasonably high, although as the Noctis member (who runs a chain of high street bars mentioned above) notes that his company’s underage refusal figures are actually dropping—largely because of the reduced footfall generally, yet also because customers are now well aware that they require valid ID to enter premises and this will be rigorously checked.

Other reasons for a reduction in footfall, include a shift in consumer choice from on to off trade, the credit crunch and the smoking ban. Nonetheless even with reduced footfall problems of customers being too young/inebriated to be admitted—or needing to be removed from the premise—continue to play a significant part in the organisation of late night venues.

It is also important to note that Noctis operators regularly report back that door staff at their venues see people who are trying to gain admittance, consuming alcohol in the queue for the venue.

The difficulty for on trade retailers in the late night sector is that, even though they know from the conversations they are having with their customers and wouldbe customers, that a very large percentage of alcohol is purchased from the off-trade and consumed before heading to our members venues, it is very hard to produce accurate statistics.

Cheap on trade alcohol is also beginning to force late night operators into the invidious and highly unhelpful situation of having to also deep discount in order to compete. This in turn can cause an unfortunate chain of events to occur which may, in some circumstances help create greater levels of disorder.

**SMOKING BAN**

The smoking ban was originally planned as a public health measure. However it is clear that it also represents additional challenges for operators in terms of managing customers in and out of premises. Our members tell us that managing customers who wish to exit the venue for a cigarette, can and sometimes does cause problems—despite the best endeavours of the venue staff.

For instance, when it takes a long time before customers are allowed out for a cigarette, because the venue staff are managing the flow of customers in and out, and when smokers outside engage in banter with those who are trying (and sometimes failing) to get in, problems can occur.

**NEGATIVE MEDIA/PUBLIC PERCEPTIONS**

It is clear from the Home Office’s own data that crime and disorder have dropped considerably since 1997. The Safe, Sensible, Social consultation document states, very clearly—quoting from recent crime figures in England and Wales from the Home Office Official Bulletin that: “alcohol-related violent crime fell by a third from 1.5 million incidents in 1997 to fewer than 1 million in 2007–08”. The next statement however (from the same source) shows that: “over the past five years, the proportion of people who think drunk and rowdy behaviour in public places is a fairly big or very big problem in their area rose from 22% to 25% of those asked”.

We need to seriously look at what represents an actual problem and what is being driven by media outlets with their own agendas. Clearly we still have a problem with alcohol related disorder and violence, but the scale of the problem and the solutions needed should be proportionate to the actual (not the perceived) levels of disorder.

Evidently something is working as far as the reduction in crime. The late night sector would argue strongly that they have played an active part in helping reduce levels of disorder by raising operating standards as well as increased partnership working with police.
CSR/Partnership Schemes

The late night sector (as with the licensed trade as a whole) has seen an unprecedented number of pressures and a high degree of scrutiny, it has also seen a massive rise in Corporately Socially Responsible activity over the last three years. This CSR activity is sometimes disparagingly portrayed, by those opposed to the licensed trade, purely as a PR exercise—yet this is both untrue and highly insulting to the many individuals working extremelly hard to raise standards. We have included a section here outlining some of these CSR schemes. It is worth pointing out that many of these schemes pre-date the Licensing Act, although Best Bar None and Shine have reached much greater prominence in the last three years.

Best Bar None

This Home Office backed scheme has been in operation now for several years with over 70 schemes now running throughout the UK. The aim of the scheme is to raise standards of operating practice.

Shine

Shine is a corporate social responsibility initiative we have been running with Diageo for the last five years. Originally conceived as an award at our annual award ceremony, it has been rolled this year to concentrate on community engagement. Diageo and Noctis are producing a good practice guide to help other areas of the UK to devise best practice in partnership and community engagement. The guide will be published towards the end of 2008.

Pub/Clubwatch

This voluntary organisation which currently has over 400 UK schemes in operation, continues to play a major part in delivering safe venues.

What has the impact of the Act been on the performance of live music?

The impact of the Act has been mixed. Some smaller operators report a negative impact in terms of their ability to stage live music events, whilst larger operators (many in venues which never used to stage much or any live music) report an increase in live music output in the last few years. It is not clear if this is actually due to the Act being a positive force—or that more operators recognise the value to their business of live music.

Has the Act 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?

The Licensing Act 2003 is regarded by operators as being too complex. We would argue that because there is no slip rule, applications are dealt with by different councils in a wide variety of ways. An example of widely differing practice would be the way that councils deal with the Minor Variations process. Additional requirements under the Licensing Act, such as paying for newspaper adverts, are also unnecessarily burdensome—and not particularly effective.

From the operators point of view, any representations received from the number of authorities (who are now much more vocal than they used to be) then need to be passed over for professional advice so that they can decide on the best way forward. This means that individuals such as Acquisitions Managers in large corporate bodies are spending substantial amounts of time dealing with correspondence concerning representations.

We would also suspect that from the licensing authorities’ point of view, increased time is spent dealing with each application. As they are the go-betweens in terms of all of the representations received (assuming that a hearing is required) they have to undergo quite a process of bureaucracy in terms of producing and circulating the Committee papers—and then convening the hearing itself. They then also have to produce an incredibly lengthy licence and summary (which often contains inaccuracies) before sending it out to the applicant.

Will the anticipated financial savings for relevant industries be realized?

We would agree that whatever savings late night operators may have gained in fees has been undermined by all the additional financial and bureaucratic burdens outlined in the previous question.
In the Government’s aim to “increase competition in the late night market” as set out in the White paper, “Time to Reform” has spectacularly backfired by creating excessive competition across the on and off-trade. As a result any minor financial savings pail into insignificance against the reduced revenues resulting from the 2003 Act.

September 2008

Witnesses: Mr Paul Smith, Executive Director and Mr Jeremy Allen, Legal Director, Noctis, gave evidence.

Chairman: We are now going to hear from Noctis who represent the voice of the night time economy. I welcome Paul Smith, the Executive Director and Jeremy Allen, the Legal Director. This may be a fairly brief session; we want to focus on some very specific issues.

Q301 Mr Sanders: Is alcohol related disorder disproportionately a problem for late night operators? What is your sector doing to tackle it?

Mr Smith: If you look at the Home Office figures alcohol related violence has dropped by 50% in the last 10 years. We have to be aware of what is actual and what is perceived in terms of alcohol related violence. There are issues in terms of alcohol related violence in terms of the late night to do with the fact that the way that alcohol related violence is reported in the press dissuades a lot of customers from wanting to go out in the night time economy which is an issue. It is a big issue for night time operators but we need to get a sense of what is actual and what is perceived in terms of the alcohol related violence.

Q302 Mr Sanders: Who funds your organisation?

Mr Smith: We are funded by our members’ contributions.

Q303 Mr Sanders: Who are your members?

Mr Smith: I can give a quick run down of who we are and what we are if you would like. We were the British Entertainment Discotheque Association until February of this year when we changed our name to Noctis. Our members are drawn from live venues, from student venues, from high street bars, from nightclubs and from a whole variety of different businesses operating beyond eleven o’clock.

Mr Allen: If you look at the Home Office figures their own houses. It is not just the alcohol that is being consumed within licensed premises that is the issue between three and six o’clock in the morning. The first thing is that there are very few people out between three and six o’clock in the morning. We have produced an annual survey with Galaxy and CGA which looks at some of these issues. The first thing to say is that there are not huge numbers of businesses that are operating between three and six in the morning. The second thing to say is that one in four people who are going out are going for a nightcap either to friends’ houses or back to their own houses. It is not just the alcohol that is being consumed within licensed premises that is the issue between three and six o’clock in the morning.

Q304 Mr Sanders: In your opinion, has the relaxation of closing hours had a positive or negative impact on night time disorder?

Mr Smith: In terms of getting rid of chucking out time, as it was called, it has probably had a positive impact in terms of the levels of disorder; they seem to have come down at an earlier point in the evening. I think there has been a spike between three and six but we are talking about a relatively small number of incidents that has caused that spike. Whether alcohol related disorder has increased is highly debatable actually. It is very patchy. The single issue seems to be between three and six o’clock in the morning. The first thing is that there are very few people out between three and six o’clock in the morning. We have produced an annual survey with Galaxy and CGA which looks at some of these issues. The first thing to say is that there are not huge numbers of businesses that are operating between three and six in the morning. The second thing to say is that one in four people who are going out are going for a nightcap either to friends’ houses or back to their own houses. It is not just the alcohol that is being consumed within licensed premises that is the issue between three and six o’clock in the morning.

Q305 Philip Davies: We just heard from the Lap Dancing Association and Peter Stringfellow, would you accept that in terms of law and order issues that it is your members that cause a far bigger problem than organisations like lap dancing clubs?

Mr Smith: No.

Mr Allen: I think the members of our association have always had very, very good systems for ensuring that people who have already consumed too much alcohol do not enter the premises and on the whole the people who go to the premises are extremely well behaved. There has been a lot of talk in the press about late night operators doing all-inclusive drinks prices of perhaps £5 or £10 but there has been no suggestion by the police that they are not being properly run or that they are causing problems. That I think demonstrates the way in which late night operators look after their customers.

Q306 Philip Davies: Can I ask you specific question on red tape and bureaucracy because there seem to be mixed messages and some confusion about whether or not the changes to the licensing application process have reduced red tape for your members or whether they have increased red tape and bureaucracy. Would you give us your perspective?

Mr Allen: I am conscious that the Department for Culture, Media and Sport is behind me in large numbers! I think the Licensing Act was a good start. I think the figures for the financial savings are totally and utterly wrong and I could go into that in more detail if you wanted me to. I think the Licensing Act is too rigid. There is, for example, no slip rule. In other words, if you make a mistake in an application technically that mistake lives with you throughout the application process and you may have it rejected even though it should not be. So little things like the slip rule and a whole mass of other things within the Act are just too rigid and ought to be changed. I think that is the main fault of the Licensing Act.
Ev 130  Culture, Media and Sport: Evidence

25 November 2008  Mr Paul Smith and Mr Jeremy Allen

Q307 Philip Davies: As the licensing legislation was going through Parliament one of the claims was that it would “sweep away swathes of red tape and bureaucracy, delivering to the industry savings of nearly £2 billion over ten years”. You are saying that is not your experience.

Mr Allen: I think that is rubbish. You have only actually got to look at the fact that every application, until we get the minor alternations procedure, has to be advertised. The major beneficiary out of the Licensing Act is arguably the newspaper industry.

Q308 Chairman: Would you get rid of the requirement of advertising?

Mr Allen: I would have a requirement where local authorities could determine how an application should be advertised based upon their knowledge of the area.

Mr Smith: In terms of the local free sheets, they do not actually reach everyone. It is very expensive. You can have a situation where you want to move a fire extinguisher, for instance, and because there is no minor variations process it will cost you thousands of pounds. If you want to put a disabled toilet in, for instance, which is an entirely laudable thing to do, it can end up costing you thousands of pounds because the application process is very expensive. There have been significant cost increases but there have been savings as well. I think in terms of the fees that late night operators used to pay they have significantly lessened under the new regime but actually a lot of the other financial burdens to do with bureaucracy and all the rest of it and also in terms of the widening of the market post eleven o’clock has meant that there is far more competition. To some extent the problems have outweighed the benefits.

Q309 Chairman: Do you think that the Legislative Reform Orders that the government is proposing to bring in will improve the situation?

Mr Allen: They would. I have been trying to assist the Department for Culture, Media and Sport on the way in which they have set this out, but the difficulty is that if you get a few complaints then it straightaway goes back to being more complicated. I think if you look, a lot of local authorities have devised their own minor variations procedure and that has been good. It is not lawful but it has been good. The new legislation has not yet been laid before Parliament but I hope when it does that it will come in quickly.

Chairman: I think, if you will forgive us, we must move on to the Minister. Thank you very much.

Memorandum submitted by Department for Culture, Media and Sport (DCMS)

Policy Context

1. The Department for Culture, Media and Sport is the Government Department responsible for licensing policy, law and regulation. In taking forward this work, the Department is guided by Departmental Strategic Objective 3:

   DSO3: Economic impact—Maximise the economic impact of its investment, improving value for money, taking full advantage of the contribution these sectors make towards the Government’s long-term goal of raising productivity and protect consumers through proportionate and effective regulation.

2. A key measure of success in delivering DSO 3 will be the reduction of administrative burdens on business caused by DCMS regulation as measured against a baseline set in May 2005.

3. The Department also works closely with the Home Office and the Department of Health in supporting their delivery of PSA 25:

   — Reduce the harm caused by alcohol and drugs (lead Department Home Office).

Licensing Act History

4. In 1998, George Howarth, the responsible Minister in the Home Office, announced a review of the liquor licensing laws. This involved all key stakeholders: the police, magistrates, local authorities, industry and groups such as Alcohol Concern. The review continued until 1999 and led to the White Paper published in April 2000.

5. Also in 1998, a sub-group of the Better Regulation Task Force (BRTF), chaired by the Association of Chief Police Officers, reviewed the licensing laws. Their work led to the BRTF’s report “Licensing Legislation”, published in 1998. It recommended that the Government should reform the alcohol and public entertainment licensing laws; deregulate licensing; allow greater flexibility; and transfer responsibility from the magistrates to local authorities.


11 Cm 4696.
7. In May 2001, the then Home Secretary announced his intention to legislate to reform the laws with only minor adjustments to the original White Paper proposals. On 8 June 2001, the Government transferred responsibility for licensing policy to the Department for Culture, Media and Sport.


9. A transitional period, during which old licences were converted into new ones, took place between 7 February 2005 and 24 November 2005 when the 2003 Act came fully into force.

10. The Violent Crime Reduction Act 2006 amended the 2003 Act. As a result, in April 2007, new offence provisions were brought into force concerning “persistently selling” alcohol to children. In October 2007, new provisions came into force allowing for “fast track” reviews of licences where premises were associated with serious crime and/or serious disorder. The latter provisions were primarily designed to tackle gun and knife crime.

**Background to the 2003 Act**

11. The purpose of the 2003 Act was to modernise and replace a raft of licensing statutes, which concerned the licensing of the sale of alcohol; the provision of entertainment; and the provision of late night refreshment. The main statutes were:

- Schedule 12 to the London Government Act 1963;
- Licensing Act 1964;
- Private Places of Entertainment Act 1967;
- Theatres Act 1968;
- Late Night Refreshment Act 1969;
- Schedule 1 to the Local Government (Miscellaneous Provisions) Act 1982;
- Cinemas Act 1985; and

12. Essentially, the Act aimed to replace eight licensing regimes, governed by three different licensing authorities (and in the case of special orders of exemption also by the Commissioners of Police for the Metropolis and the City of London) with a single regime under the administration of a single authority (“the licensing authorities”), which are mainly local authorities.

**Licensing objectives**

13. The Act aimed for the first time to bring clarity to the purpose for which activities were to be regulated. The statutory purpose of the system introduced is to promote four fundamental objectives (“the licensing objectives”). Those objectives are:

(a) the prevention of crime and disorder;
(b) public safety;
(c) the prevention of public nuisance; and
(d) the protection of children from harm.

**Other aims**

14. Ministers also made clear that they hoped the Act would support a number of other key aims and purposes:

- more democratic arrangements for alcohol licensing with decisions devolved to locally elected councillors rather than the courts;
- 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;

---

12 Only in England and Wales—the 1985 Act continues to have effect in Scotland.

13 The others are the Sub-Treasurer of the Inner Temple and Under-Treasurer of the Middle Temple, the Common Council of the City of London and the Council of the Isles of Scilly.
--- the regeneration of areas that needed increased investment and employment opportunities; and
--- the necessary protection of local residents, whose lives can be blighted by disturbance and anti-social behaviour associated with some people visiting places of entertainment.

**Licensable activities**

15. The Act regulates the sale by retail of alcohol; the supply of alcohol by or on behalf of a club to a member of the club; the provision of regulated entertainment; and the provision of late night refreshment (hot food and drink after 11.00 pm).

16. Regulated entertainment includes:
--- A performance of a play.
--- An exhibition of a film.
--- An indoor sporting event.
--- A boxing or wrestling entertainment.
--- A performance of live music.
--- Any playing of recorded music.
--- A performance of dance.

17. It also includes the provision of facilities for making music or dancing. Various exemptions apply and are detailed in Schedule 1 to the Act.

18. Types of premises affected by the 2003 Act include:
--- Public spaces such as market squares, village greens or open fields.
--- Concert halls.
--- Theatres.
--- Cinemas.
--- Public houses.
--- Restaurants.
--- Hotels and some guest houses and B&Bs.
--- Bars.
--- Nightclubs.
--- Casinos.
--- Bingo Halls.
--- Canteens retailing alcohol.
--- Supermarkets.
--- Shops and convenience stores retailing alcohol.
--- Department stores retailing alcohol.
--- Garages retailing alcohol.
--- Non-profit making clubs with 25 members or more (including, sports clubs, political clubs (Labour, Liberal Democrat and Conservative Clubs), working mens’ clubs, miners’ institutes, ex-services clubs (eg Royal British Legion) and others.
--- Village, church and community halls.
--- Indoor sports complexes staging sports entertainments.
--- Outdoor venues staging boxing and wrestling entertainments.
--- Late night cafes.
--- Late night “take aways”.

19. The 2003 Act is the mechanism by which film exhibitors are obliged to comply with film classifications given by the BBFC, or in the alternative, by the licensing authority.

20. Late night refreshment covers the provision of hot food or hot (non alcoholic) drink between 11.00 pm and 5.00 am. Again, numerous exemptions apply.

21. The system of licensing is achieved through the provision of authorisations, which include personal licences, premises licences, club premises certificates and temporary event notices.
**Personal licences**

22. Personal licences authorise individuals to sell or supply alcohol, or authorise the sale or supply of alcohol, for consumption on or off premises for which a relevant premises licence is in force. A personal licence is not required where the licensable activities are confined to entertainment or late night refreshment.

23. To qualify for a personal licence an individual must be aged 18 or over, possess a recognised accredited qualification and be able to show the licensing authority that he has not been convicted of certain offences (“relevant offences” and “foreign offences”).

24. If a person has been convicted of a relevant offence or foreign offence, and taking into account the views of the police, the licensing authority can refuse to grant a personal licence if it considers that doing so would undermine the crime prevention objective. Personal licences last for ten years and are then renewable.

**Premises licences**

25. A premises licence authorises the holder of the licence to use the premises to which the licence relates (“the licensed premises”) for licensable activities.

26. The premises licence details operating conditions. The purpose of these conditions is to regulate the use of the premises for licensable activities in line with the licensing objectives. They will vary according to the risks each individual premises presents to the achievement of the four objectives. In the case of alcohol, the old permitted hours have been abolished. In effect, the hours of trading for each premises are another condition which will vary according to the risks identified.

27. A premises licence has effect until the licence is revoked or surrendered, but otherwise is not time limited unless the applicant requests a licence for a limited period. There are no renewal procedures. Under the old licensing regimes licences had to be renewed either on an annual or on a triennial basis.

28. Representations may be made about an application for the grant of a premises licence; for example by local residents and businesses, the police, the fire authority and other public bodies with responsibility for environmental health, health and safety, children, trading standards and planning.

29. Such representations must concern the promotion of the licensing objectives. Once the licence has been granted the same classes of persons and bodies may seek a review of the premises licence and the conditions attaching to it.

**Club premises certificates**

30. Club premises certificates provide authorisation for qualifying clubs to use club premises for qualifying club activities. Such clubs tend to be, for example, political clubs, sports clubs, ex-services clubs, working men’s clubs and social clubs with at least 25 members. The qualifying club activities are a subset of the licensable activities. They are the supply of alcohol by or on behalf of a club to a member of the club, the sale by retail of alcohol by or on behalf of a club to a guest of a member for consumption on the premises and the provision of regulated entertainment by or on behalf of a club for its members and guests. A qualifying club does not require a permission for late night refreshment or a Designated Premises Supervisor.

31. As with premises licences, the right to make representations on the application for a club premises certificate is given to a range of persons and bodies.

**Temporary event notices**

32. The 2003 Act established new arrangements for the carrying on of licensable activities at occasional or temporary events. These arrangements replace the multiple systems of “occasional permissions” and “occasional licences” which applied to the old alcohol and entertainment regimes.

33. They apply in relation to events with fewer than 500 people (including staff) attending at any one time. The new arrangements are based on a notification to the licensing authority of salient details of the event and an acknowledgement by that authority of the notification. To reflect the temporary nature of the events, these arrangements do not place organisers under the same obligations that apply in relation to those who regularly wish to undertake licensable activities on or from premises.

34. Such notices are subject to various limitations. These include:
   - no more than 12 may be given for the same premises in a calendar year;
   - in aggregate, the 12 temporary event notices given for the same premises may not exceed 15 days;
   - no more than five TENs may be given by any individual (who does not hold a personal licence) in a calendar year;

---

14 See section below: “Reviews”.
— no more than 50 TENs may be given by a personal licence holder in a calendar year; and
— the duration of a temporary event may not exceed 96 hours.

35. TENs are given by community groups and organisations such as parent/teacher associations, as well as commercial organisations.

Licensing statistics

36. According to the DCMS Statistical Bulletin\(^\text{15}\) as at 31 March 2007, there were 162,100 premises licences and 15,200 club premises certificates in force. There were over a quarter of a million personal licence holders [based on responses from 86% of LAs].

— 123,700 licences and certificates in force were authorised to sell alcohol [based on responses from approx. 70% of LAs];
— 32,900 premises licences were authorised for off-sale of alcohol only.
— 28,100 licences authorised on-sale of alcohol only, of which 4,900 were club premises certificates (eg political clubs, workingmen’s clubs, British Legion etc).
— 62,700 allowed both on and off sales, of which 7,300 were club premises certificates.
— Just over 50,000 premises were licensed for late night refreshment. [72% response rate],
— 72,600 premises licences and 9,100 club premises certificates were authorised for any form of entertainment. Over 260,000 regulated entertainment activities were authorised; the most common types of which were playing of recorded music and the staging of live music. [this is based on 68% of all LAs].
— 5,100 premises had 24 hour licences [Based on 83% of all LAs].
— 3,320 of which are hotel bars which have always been able to serve their guests alcohol for 24 hours.
— 920 are supermarkets and stores. We do not have any data on actual opening times of such premises, although one of the trade bodies representing the off-trade has suggested that one of its largest members reports that 15% of their stores with 24 hour alcohol licences do not actually open their stores for 24 hours. Others choose not to open their alcohol aisles for 24 hours, often following discussions with the police about local issues.
— 470 pubs, bars and nightclubs have 24 hour licences, but there is no evidence that more than a handful operate on that basis.
— Around 100,000 TENs were given in 2006/07 [85% response rate], mainly by non-commercial organisations

Fees

37. The Act provides for the setting of fees in relation to applications, notifications, licences and certificates. Fees are set centrally and aim to be set on the basis of full recovery of the costs to local authorities of their functions under the 2003 Act.

Reviews

38. The Act allows interested parties and responsible authorities to ask the licensing authority to review premises licences and certificates if problems arise in relation to one or more of the licensing objectives. Licensing authorities have the power, on review of a premises licence or certificate, to suspend or revoke the licence, and/or to exclude specific licensable activities from the licence, and/or to modify operating conditions attaching to the licence; and/or to require the removal of the designated premises supervisor (where one exists). These powers must be exercised only where they are necessary to promote the licensing objectives.

39. This graduated system of sanctions replaced the single choice available to licensing justices under the old alcohol licensing regime of either revoking a licence or doing nothing when problems arose. Justices were understandably reluctant to put individuals out of business and their staff out of jobs unless the issues were very serious. The new arrangements allow for a proportionate response to the issue before the licensing committee.

---


The 2007–08 data collection is currently underway and will be published on 30 October 2008.
Closure powers

40. The 2003 Act confers powers on the police to close individual licensed premises to deal expeditiously with disorderly behaviour and excessive noise; these powers are both anticipatory and reactive. The police may also seek an order from the courts to close multiple licensed premises in a geographical area where disorder is either actually taking place or is anticipated. Powers to close licensed premises are also included in section 19 of the Criminal Justice and Police Act 2001 (to do with breaches of conditions at on-licensed premises) and sections 40 and 41 of the Anti-Social Behaviour Act 2003 (to do with noise nuisance).

Enforcement

41. The new regime is supported by a range of offences, inspection powers and enforcement provisions.

42. Breach of a licensing condition is a serious offence which can render the holder of the premises licence (often a business) liable to a maximum fine of £20,000 or imprisonment up to six months or both.

43. Fines for selling alcohol to children under 18 were increased fivefold by the Act to a maximum of £5,000.

44. Fines for selling alcohol to people who are drunk were doubled by the Act to a maximum of £1,000.

Selling alcohol to children and purchase of alcohol by children

45. Under the old alcohol licensing regime, the laws governing sales of alcohol to children applied only to licensed premises. The 2003 Act made it an offence to sell alcohol to children under 18 anywhere and abolished the arrangements which had made it lawful to sell alcohol to children in:

— almost 20,000 non-profit making members' clubs;
— on river and coastal cruises; and
— on trains.

46. Provisions which had allowed children over five years to consume alcohol in around 25,000 restaurants and in areas in public houses away from the “bar area” (such as the beer garden) were also repealed.

47. It had also been lawful for children aged 16 or 17 years to purchase and consume beer, porter and cider where they were consuming them with a table meal. These provisions were replaced with new provisions which allowed children aged 16 and 17 to consume (but not purchase) wine, beer and cider with a table meal where they are accompanied at the meal by an adult that had purchased the alcohol.

48. Test purchasing of alcohol sales to under 18s under the authority of the police or trading standards officers was first made lawful by the Government in the Criminal Justice and Police Act 2001. These provisions were continued in the 2003 Act and have become central to campaigns since 2004 to tackle unlawful selling to children. Overall, the test purchase failure rate has fallen from 50% in 2004 to 15% in 2007.16

49. The most recent data on consumption by 11–15-year-olds is contained in “Drug Use, Smoking and Drinking Among Young People In England in 2007”.17 It reports that the proportion of 11–15-year-olds who have never drunk alcohol has risen in recent years from 39% in 2003 to 46% in 2007. There has been a corresponding decline in the proportion of pupils who have drunk alcohol in the last seven days from 26% in 2001 to 20% in 2007. But for those who do drink, the amount drunk is increasing.

Evaluation

50. An evaluation of the implementation of the Licensing Act 2003 was completed and published on 4 March 2008.18 On the same day, the Secretary of State made a Written Statement in the House about the evaluation.19 The evaluation included:

— an assessment of the impact of the Licensing Act 2003 on levels of crime and disorder (Home Office report) (more detail is given later in this Memorandum);
— the views of 10 licensing authorities—the “Scrutiny Councils” on how the new licensing regime is being delivered and whether it is meeting its aims—Scrutiny Council Initiative: Progress Report 2007;
— an assessment of the impact on terminal hour by market segment (ie. actual closing times);
— an Independent Fees Review Panel to ensure the fees are set at the right level for local government and licensees;

Ev 136  Culture, Media and Sport: Evidence

— a review of the Guidance to licensing authorities and the police on the discharge of their functions under the Act;
— the first Licensing Statistical Collection for the new regime;
— the Live Music Forum’s Report “Findings and Recommendations” (more detail is given in later in this Memorandum); and
— independent research to establish live music activity in England and Wales prior to and following the implementation of the 2003 Act.

51. In the first year of the new licensing regime, overall problems of crime and disorder did not increase. In aggregate, five case study sites showed little change. Overall violent crime fell by 3%. In four out of five sites there was a fall in levels of violent crime between 11.00 pm and midnight; and a small proportion of violent crimes between 3.00 am and 5.00 am grew in the year after the change. The proportionate increase in these areas was large, but the absolute numerical increase was very small.

52. Alcohol consumption figures from the General Household Survey and derived from HM Customs and Revenue statistics indicate that alcohol consumption has been falling in recent years.

53. Appendix A to the Evaluation of the Impact of the Licensing Act 2003 utilised the following evidential strands to evaluate the impact of the 2003 Act on levels of crime and disorder:
— a statistical exercise covering 30 of the 43 police forces in England and Wales;
— a national telephone survey of police licensing officers;
— findings of the British Crime Survey (BCS) Night Time Economy module covering periods before and after implementation; and
— detailed case studies of the experience of five towns and cities.

54. The Report assessed against the available evidence the impact of the Act on:
— licensing hours;
— consumption;
— crime and disorder in the five case study areas; and
— crime and disorder nationally.

55. In doing so, it looked at:
— serious violent crime;
— low level offending and anti-social behaviour, including harassment offences;
— the spread of offences at different times of day and night;
— perceptions of the safety of people in town centres at night; and
— levels of people witnessing drunken anti-social behaviour in town centres.

56. The main findings in relation to crime and disorder were:
— There are no clear signs yet that the abolition of a standard closing time has significantly reduced problems of crime and disorder and, overall, the volume of incidents of crime and disorder appears unchanged.
— There are signs that crimes involving serious violence may have reduced overall, but there is also evidence of temporal displacement, in that the small proportion of violent crime occurring in the small hours of the morning has grown.
— Alcohol-related demands on Accident and Emergency (A&E) services appear to have been stable in aggregate, though some individual hospitals have seen increased demand, others a fall.
— Police, local authorities and licensees generally welcomed the changes, the new powers it gave them, and the Act’s partnership philosophy. They did not report significant problems with implementation—once teething problems were solved—and did not think generally that alcohol-related problems of crime and disorder had worsened.
— In surveys, local residents were less likely to say that drunk and rowdy behaviour was a problem after the change than before it, and the majority thought that alcohol-related crime was stable or declining.
— The main conclusion to be drawn from the evaluation is that licensing regimes may be one factor in effecting change to the country’s drinking culture—and its impact on crime—but they do not appear to be the critical factor. The key issue is how they interact with other factors.

20 The five case studies were Birmingham, Blackpool, Croydon, Guildford and Nottingham.
57. The Home Office evaluation also indicated that, while the Act’s impact on crime and disorder has so far been broadly neutral, 13 out of 27 police licensing officers felt that the Act had improved crime and disorder, a similar number felt it had been mixed or made no difference, and only one felt it had got worse. This was consistent with the findings of a National Audit Office report on the effectiveness of violent crime reduction at local level which found that 46% of Crime and Disorder Reductions Partnerships found the Licensing Act either effective or very effective in reducing violent crime, whereas 41% reported that it was neither effective nor ineffective, and 13% considered it to be either ineffective or very ineffective. 13

58. The evidence suggests that the predictions of increases in crime and disorder that accompanied the Act’s implementation have not been borne out. There are some signs of positive benefits from the new legislation, with those who are involved in its operation generally positive about the new regime.

59. However, despite some positive reports from some areas, there is no consistent evidence of a positive impact. While there are signs that crimes involving serious violence may have reduced, there is also evidence of a shift in the small proportion of violent crime occurring in the small hours of the morning.

60. The Secretary of State announced a number of measures as a result of the evaluation in a written Ministerial statement to Parliament. 21 As a result the Home Office and DCMS are conducting additional research into violent crime in the early hours and patterns of post midnight opening. They are also progressing a programme of activities to encourage better local partnership working between enforcement authorities and to share best practice in identifying problem premises and using licensing powers alongside other interventions to deal with them.

61. The Scrutiny Councils provided examples of where the legislation had been successfully used to tackle public nuisance. 22 The Live Music Forum (see sections below on the impact of the Act on live music) found that licence conditions relating to the prevention of noise nuisance were often applied in relation to licences which included live music. The Forum felt that some authorities had been acting unreasonably by applying blanket or unnecessary and disproportionate conditions relating to noise against the spirit of the legislation and the guidance. 23

62. The Scrutiny Councils raised the possibility that public nuisance concerns could be exacerbated by customers gathering outside of licensed premises as a result of smoke free legislation and this was echoed in the Department’s engagement with local residents’ groups. While no firm evidence yet exists about whether this has had such a negative impact, the revised statutory guidance to licensing authorities clarified how licensing can be used to control areas directly outside a licensed premises in response to issues raised during consultation. 24

63. In relation to public safety, DCMS is aware that there have been some concerns about how licensing, and the public safety objective in particular, should operate following the changes to fire regulations through the Fire Reform Order.

64. There is no evidence linking the changes brought by the Licensing Act 2003 with incidences of road traffic accidents involving drunk drivers.

THE IMPACT OF THE 2003 ACT ON THE PERFORMANCE OF LIVE MUSIC

65. Partly in response to concerns about the possible impact of licensing reform on the performance of live music, the Government set up the Live Music Forum in January 2004 to monitor the Act’s impact on live music and to make recommendations to Government on how it might further bolster live music provision. The Forum’s findings and recommendations were published on 4 July 2007. 25 The Forum found that:

— Some of the predicted benefits of Licensing reform, such as abolishing the need for annual renewal and consistency over fee levels, have been delivered.

— There was no evidence of a serious detrimental effect on overall live music provision, but neither had the legislation led to an increase in live music provision.

— The majority of local authorities had been fair and reasonable in their licensing decisions, although a minority of authorities had been acting unreasonably and against the spirit of the legislation and the guidance.

— The Forum believed licensing was not appropriate, proportionate or necessary for non-amplified performances of live music or those with audiences under 100 people.

66. Ministers responded on 17 December 2007. 26 A key element of the Government’s response was a commitment to explore exemptions for low-risk performances of live music which do not cause public nuisance or compromise public safety. DCMS has been engaging key stakeholders in a pre-consultation

exercise to try to agree possible exemption. At the time of writing, there was is consensus between stakeholders with local authority representatives particularly concerned that such exemptions will remove necessary public protection.

67. DCMS commissioned research to support the work of the Forum and to monitor any changes in the number of performances before and after the legislation came into effect. While this suggested that the provision of live music in “secondary” venues had declined by 5%, it did not find that the decline was due to the Licensing Act. The data suggested that decisions on staging live music were driven primarily by commercial considerations, such as customer demand, cost-efficiency and fit with the nature of the business, as well as by practical considerations, in particular the suitability of the venue for staging live music. These reasons had not changed since before the 2003 Act came into force.

68. The live music survey identified community halls as a premises type which had experienced one of the biggest declines in live music provisions. While it did not suggest this was due to licensing changes, separate evidence from the sector and, in particular, Action with Communities in Rural England (ACRE), has suggested that such establishments were reluctant to obtain full licences which included alcohol sales, in large part because of difficulties in finding a volunteer to act as personal licence holder and Designated Premises Supervisor. They were therefore trying to accommodate such activities through the use of Temporary Event Notices (TENs) which are limited to 12 each year.

69. The Government has responded by progressing a Regulatory Reform Order to remove the requirement for a village hall to have an individual named as the Designated Premises Supervisor or a personal licence holder. When implemented, this will remove a barrier to village and community halls securing full premises licences which include the sale of alcohol, thereby reducing their reliance on a limited number of TENs. This will give such venues more flexibility to allow a range of events, including live music.

THE FINANCIAL IMPACT ON SPORTING AND SOCIAL CLUBS

70. Prior to the Licensing Act coming into force, representatives of sports clubs had advised Ministers that the licensing fees would have a disproportionate effect on voluntary sport. The Independent Fees Panel was therefore asked to look at this issue as part of its review. The Panel reported in December 2006 that it had examined the impact of the Licensing Act 2003 on sports clubs and had been provided with information on impact; a rationale for reducing costs to sports clubs; and a range of options for doing so. The representative bodies all agreed with the Panel that Government cannot be seen to be subsidising the sale of alcohol and that the newly constructed licensing regime must run at full cost recovery.

71. However, those stakeholders also suggested to the Panel that sports clubs were paying significantly more in licensing fees than the Government originally envisaged because the majority of clubs did not necessarily fall into the lower fee bands (A and B) as the Government had suggested.

72. The representatives submitted to the Panel a licensing fee scheme that recognises the essential differences between not-for-profit sports clubs and commercial drinking venues; that voluntary sports clubs are established for the benefit of the community as a whole and contribute to the health and quality of life of the locality; and that this difference should be reflected in the scale of fees.

73. The Panel also reported that the evidence provided by licensing authorities to them suggested an impact on all sport clubs under the current fees regime of around £500,000, with the majority of premises in Bands A and B. The Panel advised that they had looked at this issue in detail and suggested that, should the Government wish to do so, a case could be made for introducing a system whereby all clubs in the Community Amateur Sports Clubs (CASC) scheme could have their licence fee calculated at 20% of their rateable value.

74. However, the Panel said explicitly that they were uneasy about recommending this discount. They said that they had no evidence that any amateur sports clubs have actually had to discontinue licensable activity as a result of licensing fees. In addition, CASCs already benefit from rate relief alongside village and community halls and other not-for-profit facilities. The Panel therefore did not feel it would be appropriate to single out CASCs for a further discount at that time, but acknowledged that Government might wish to consider this further in the future.

75. More generally on not-for-profit groups, the Panel reported:

“Whilst we are sympathetic to not-for-profit groups and cultural businesses, we have not been presented with a coherent argument or solution which we believe currently justifies any further exemptions or reductions in fees for these sectors. What has come through in our research however is more the administrative burden on these organisations. There are arguments for treating village and community halls in a similar way to community amateur sports clubs, but we believe that their concerns would be better addressed though our recommendations for Temporary Event Notices and proposals for the removal of the Designated Premises Supervisor (DPS) requirements”.

76. Since the Government received the Independent Fees Panel’s report, no new or additional evidence has been received to indicate that sports and social clubs have suffered a detrimental financial impact as a result of the 2003 Act coming into force. Clubs have benefited in the same way as commercial operators in terms of the reduction in administrative burdens.

77. There is some indication and anecdotal evidence that smoke free legislation has had a detrimental financial impact on some non-profit making clubs.

78. In line with the Fees Panel’s comments about regulatory burdens, the club movement should also benefit from the Legislative Reform Order on “Minor Variations” which the Government is currently taking forward and which, if Parliament gives approval, will introduce a simpler and abbreviated administrative process for variation applications that do not impact on the four licensing objectives.

79. It remains the position that the Government is unwilling to subsidise the consumption of alcohol in sports and social clubs. It is also not possible under the current rules governing “fees and charges” to cross-subsidise the costs generated by clubs by requiring commercial operators to pay more.

80. The Government does, however, keep the impact of the regime on sports and social clubs under review.

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

81. The Government believes that licensing reform has delivered significant reductions in bureaucracy for those applying for and holding licences under the 2003 Act. The table below shows the annual administrative processes under the old licensing regimes which have been removed by the Licensing Act 2003 and replaced with a system whereby there is no routine renewal process for premises licences and certificates; where personal licences are renewed every 10 years and a new light touch process for temporary events. The numbers below are derived from the May 2005 baseline established by PriceWaterhouseCooper.29

<table>
<thead>
<tr>
<th>Administrative Burden Removed</th>
<th>Number annually</th>
</tr>
</thead>
<tbody>
<tr>
<td>triennial renewals of justices’ licences to sell alcohol</td>
<td>160,000 profiled as 53,333 annually</td>
</tr>
<tr>
<td>triennial renewal of canteen licences</td>
<td>4,500 profiled as 1,500 annually</td>
</tr>
<tr>
<td>renewal of club registration certificates every 3–5 years</td>
<td>20,000 profiled as 5,000 annually</td>
</tr>
<tr>
<td>annual renewal of cinema licences</td>
<td>600</td>
</tr>
<tr>
<td>annual renewal of theatre licences</td>
<td>300</td>
</tr>
<tr>
<td>annual renewal of public entertainment licences outside London</td>
<td>60,000</td>
</tr>
<tr>
<td>annual renewal of indoor sports entertainment licences outside London</td>
<td>20,000</td>
</tr>
<tr>
<td>annual renewal of public entertainment licences inside London</td>
<td>300</td>
</tr>
<tr>
<td>annual renewal of indoor sports entertainment licences inside London</td>
<td>50</td>
</tr>
<tr>
<td>annual renewal of night café licences in London</td>
<td>3,000</td>
</tr>
<tr>
<td>annual renewal of late night refreshment house licences</td>
<td>5,000</td>
</tr>
<tr>
<td>annual renewal of private place of entertainment licences</td>
<td>20,000</td>
</tr>
<tr>
<td>applications for special orders of exemption</td>
<td>750,000</td>
</tr>
<tr>
<td>applications for supper hour certificates for restaurants</td>
<td>500</td>
</tr>
<tr>
<td>applications for extended hours orders for restaurants with live music</td>
<td>500</td>
</tr>
<tr>
<td>applications for special hours certificates for commercial premises</td>
<td>2,000</td>
</tr>
<tr>
<td>applications for special hours certificates for registered clubs</td>
<td>2,000</td>
</tr>
<tr>
<td>applications for “removal” of a justices’ licence (transfer of a licence to another premises)</td>
<td>7,500 (requiring court attendance by 11,250 individuals)</td>
</tr>
<tr>
<td>applications for “protection orders”</td>
<td>1,500</td>
</tr>
<tr>
<td>maintenance of (a) “day book” and (b) delivery or invoice book</td>
<td>12,500</td>
</tr>
<tr>
<td>applications for children’s certificates</td>
<td>1,120</td>
</tr>
<tr>
<td>applications for Christmas Day extension of permitted hours for restaurants</td>
<td>6,000</td>
</tr>
</tbody>
</table>

Hours of trading

82. The 2003 Act abolished “permitted hours” which had restricted the hours at which alcohol may be sold either for consumption on or off the premises. Apart from reducing the disorder that was partly caused by fixed closing times, the Government’s aim was not only to give consumers greater freedom of choice and businesses greater opportunity, but also to provide tough and uncompromising powers to deal with those who abused these freedoms.

83. The Act established a system under which premises were free to apply individually for their preferred hours of trading, subject to representations that could be made by responsible authorities, such as the police and environmental officers, or interested parties, such as local residents and other local businesses.

84. The evaluation of the Licensing Act 2003 found that on average pubs, bars and clubs were trading for approximately 21 minutes per day longer than under the previous regimes. Some commentators have suggested that this proves that the Act had made very little difference. It is important to understand that this is an average. There are about 81,000 pubs, bars and clubs in England and Wales. A daily average of 21 minutes translates to approximately 10.3 million extra trading hours per year for all on-trade premises.

Further simplification

87. The DCMS simplification plan (see section below) sets out a number of measures to adjust the process to reduce the burdens and costs. These include measures to allow for a light touch process for minor variation to licences; to encourage village and community halls to obtain full premises licence by allowing them to remove the requirement for a designated premises supervisor; and to identify low risk activities to exempt from the regime entirely. In addition, the simplification plan commits DCMS to progress measures to simplify the various application processes and to look at the scope for introducing a single licence system for travelling entertainment, such as circuses.

88. While the focus of the simplification plans has been to remove unnecessary burdens on those regulated by the regime, aspects of the plan may have benefits for those administering the legislation. For example, making electronic applications a reality could have a significant impact on helping licensing authorities and responsible authorities deal with applications. Similarly, Ministers have said that they would look at whether they can adjust the TENs regime so that the required 48 hours notice given to the police occurs on working days rather than calendar days.

Whether the anticipated financial savings for relevant industries will be realised

Simplification and Administrative Burdens

89. The DCMS published Better Regulation Simplification Plans in 2006 and 2007. Both have laid heavy weight on the importance of the contribution to be made through the licensing reform programme.

90. In the first plan published in 2006, DCMS committed to reducing the administrative burdens on industry resulting from the regulations for which it is responsible by 30 % by 2010. The 2007 Plan reported excellent progress. The Licensing Act 2003, implemented in November 2005, has reduced the costs of burdens by £97.2 million compared to the old licensing regimes, but without removing any of the protections. Revised licensing guidance published in March 2007 secured a further saving of £2 million. These savings were validated by an Expert Panel which included independent representatives from industry. Together, this represents a reduction in administrative burdens by 29%.

91. In effect, the 2003 Act has produced savings in administrative burden reductions of about £8 million per month. The Act came fully into force on 24 November 2005. By 24 November 2008, savings should amount to approximately £285 million.

92. The Government is currently taking forward three Legislative Reform Order proposals:

- “minor variations”, which aims to introduce a simplified and curtailed procedure for low impact variations of licences, and which has completed public consultation with an expectation of laying an Order for Parliamentary consideration in November;
- “village halls”, which aims to introduce an easier arrangement for community premises in the interests of volunteers whereby no designated premises supervisor need be specified on a licence, and which has completed public consultation with an expectation of laying an Order for Parliamentary consideration in November; and
- “de minimis”, which aims to exempt certain low impact activities from the licensing regime and which is at a pre-consultative stage with representatives of licence holders, local authorities and the police. This will be the subject of a public consultation later in the year.

92. Further licensing related elements of the simplification plan which are being worked up include the simplification of the application processes and options for a possible single transferable licence for travelling forms of licensable activity, such as travelling circuses.

Witnesses: Gerry Sutcliffe MP, Minister with Responsibility for Licensing, Mr Stuart Roberts and Mr Andrew Cunningham, Department for Culture, Media and Sport, gave evidence.

Q310 Chairman: For the final part of our session can I welcome the Minister responsible for Licensing, Gerry Sutcliffe and you have two of your officials from the Department with you. 
Mr Sutcliffe: That is right, Mr Cunningham and Mr Roberts.

Q311 Mr Sanders: Gerry, do you think the intentions behind the Licensing Act have been delivered? 
Mr Sutcliffe: On the whole yes, we believe that the licensing objectives that were set out—preventing crime and disorder, preventing public nuisance, promoting public safety, preventing children from harm—were the key objectives of the Licensing Act and on the whole we are pleased. In the evaluation that was done in March of this year most people think that the Act has been very progressive.

Q312 Mr Sanders: What benefits do you think are still to be realised? 
Mr Sutcliffe: Greater consistency in the application of the Act in terms of the partners. Many of the criticisms have been the variation in advice given by local authorities and what we are trying to do is look to see if it is operating in the best way and try to apply that across the whole of the piece. We have done that through a joint seminar with the Home Office looking at the workings of the Act. I think that was one of the biggest complaints, the lack of consistency of approach.

Q313 Mr Sanders: Are you conscious of some of the observations that people make that the objection they may have to a licence does not fall within the four categories? We have heard quite a bit about that today in relation to lap dancing clubs being treated perhaps as sex establishments. Are you familiar with that debate? 
Mr Sutcliffe: Certainly on lap dancing it was an issue that was raised initially by a number of Members applying for general debates; there was then a number of letters that came in on the growth of the number of lap dancing clubs. We decided to take a look in terms of whether there was an issue there; we certainly did not feel that it was because of the Act. The 2003 Act was very clear in terms of what the licensing objectives could be and content was not one of them. That was very clearly stated during the progress of the bill that that was the case. I wrote out to chief executives of local authorities on 18 June to see if they felt there needed to be stronger powers in addition to what was available within the Act and it attracted 117 responses, the majority of which felt that we needed to do more. Clearly the Home Secretary who leads on this issue—because of the wider responsibilities relating to public indecency, sexual exploitation and prostitution—announced in September that the government were going to take a closer look at what could be done. There have been a variety of suggestions relating to the Local Government Miscellaneous Act. A number of things have to be looked at but we are waiting to hear what will be announced in due course.

Q314 Chairman: Is it your view that lap dancing clubs are different from other entertainment venues? 
Mr Sutcliffe: I do not take a view in that sense. It was not an issue in relation to the objectives of the Licensing Act, but I think there is definitely an issue in relation to the number of clubs and the proliferation of clubs. We do believe that there are aspects of the Licensing Act that could be used to prevent proliferation but there may be other tests that need to be put in place. The whole purpose of the Licensing Act was to get decision making at a local basis. We think it is important that if there is an issue then government should look at that.

Q315 Chairman: I led for the opposition on the Licensing Act and as far as I can recall lap dancing was not mentioned. I think I probably would have remembered if it had been. Was this something that slipped through without the government being aware? 
Mr Cunningham: During the bill there was a debate on the issue of censorship and whether the Act should, in certain respects, be able to censor the content of, say, dance and all sorts of other activities, plays et cetera. The position that was adopted by Parliament was that it should not do that and it should not open the door to going back to the Lord
Chamberlain’s powers. There was not a specific debate about lap dancing as such, but there was a debate about content.

Q316 Chairman: Which concluded that this should not be taken into account.
Mr Cunningham: The issues you have discussed this morning about where bad lap dancing clubs have some association with prostitution, the Licensing Act is the appropriate route because that is crime. You can require that CCTV cameras be placed inside and all of those things. The issue that was brought to the Minister’s attention was about the fact that people felt these places ran down the area, that residents could not get those views over and that is why the government is looking at whether a different regime should deal with those aspects.

Q317 Chairman: There are four criteria under which licences are currently judged, none of which apply really in terms of raising concerns about lap dancing clubs. The government would consider, nevertheless, looking at some kind of additional measure to deal with lap dancing clubs for different reasons than the four criteria?
Mr Cunningham: Yes.

Q318 Philip Davies: Following on from that, would you accept that the nub of the argument that we seem to have got to was not really about licensing lap dancing clubs, it seems to be more about whether or not people have a particular view, whether or not lap dancing clubs are an acceptable form of entertainment, whether or not people morally believe in lap dancing as opposed to whether or not there are any particular licensing ramifications. Would you accept that really is the nub of the issue?
Mr Sutcliffe: I think so, yes. The case I remember was at Brighton where five clubs had appeared in a very short space of time and there was concern in the local community about whether that should be the case or not, and the feeling that there was not an opportunity to oppose the introduction of those five clubs. I do think it boils back to what you are saying, that it is people’s view about lap dancing.

Q319 Philip Davies: Turning to crime and disorder as a result of the Licensing Act, would you say that there has been an increased level of crime and disorder, certainly at particular times of night as a result of allowing places to open for longer?
Mr Sutcliffe: Not particularly. We looked at the statistics that showed a 5% reduction in serious crime, a 3% reduction in less serious crime. There has been an increase in numbers of associated crime but not dramatically and again it has been very patchy around particular areas. My view is that on the whole the Act has worked well; it has given the local authorities and the police the opportunity to deal with the peaks and we have seen in certain areas those peaks reduced.

Q320 Philip Davies: When ACPO gave evidence they said that we have probably seen some rise in disorder and we have seen some rise in violence at certain hours of the evening. The Police Federation said that the growth of very large pubs is very difficult to secure and police effectively without a significant drain on police resources. Do you not accept those concerns of ACPO and the Police Federation?
Mr Sutcliffe: I can understand why ACPO and the Police Federation might raise those concerns. However, I do believe that the figures are down. If you look at some of the lesser crimes of harassment they are on the increase perhaps and that needs to be addressed and how we deal with that. Whilst we are not claiming that everything is perfect, certainly the authorities that I have been involved with and the evidence I have looked at shows that there is a reduction in the peaks and the police authorities and most of the local authorities welcome the opportunity to be able to deal with it in a more ordered way. I think I gave the example last time I came before the Committee of the time that I went round with the police in Bradford where, as you all know, they have seen an increase in a better way of dealing with the night time economy through the introduction of the Licensing Act.

Q321 Philip Davies: Would you not accept, simply because these places are open in a way that they were not open before, that later at night the police resources are now more stretched than they otherwise would have been later into the night?
Mr Sutcliffe: I think you have to look at the number of overall premises that are licensed to sell alcohol. In 2004 it was 179,865, in 2008 it was 179,400 so there has been a reduction in the number of places selling alcohol. Again I am sure from all of our constituencies you will notice the number of alcohol establishments that are closing.

Q322 Chairman: The original vision which we were given by the Secretary of State at the time was that the Licensing Act was going to foster this new culture of families sitting out at tables gently sipping glasses of wine of a balmy evening. It was not that we were going to have what are now being called vertical drinking establishments of a thousand people trying to consume as much alcohol as possible in the shortest possible time and then spilling out onto the street at two o’clock in the morning. The latter seems to have been what has actually happened rather than the former.
Mr Sutcliffe: I do not think so. If you look at the overall time it is 20 minutes that has been added to the overall length of time and it is true that a number of pubs and clubs are staying open for an hour later on a Friday or a Saturday night for instance. I do not accept that we have any massive problems. There is a change in demographics; there is a change in how people look at the night time economy and how they deal with alcohol which I know you have received evidence about. The survey was a key part of the All-Party Parliamentary Beer Group’s report to me as well.

Q323 Mr Sanders: A lot depends on the area and I think there are some very different experiences nationwide. The night time economy is very
important to my constituency. There are a large number of nightclubs and also increasing numbers of cafes with drinking on the streets in a pleasant almost continental-style environment which our natural climate helps I have to say, compared perhaps to some northern climes. My point is what the police locally have found difficult is to get the pubs and clubs together to try to reduce the number of happy hours and very cheap promotions. What the pubs and clubs have turned round and said is that it is all very well asking them to contribute, but what about the supermarkets who are actually selling alcohol at below cost? They are actually subsidising alcohol at loss leader prices. The pubs and clubs are finding that their clientele are often coming out to the pubs and clubs in the evening having already consumed a degree of alcohol that has most likely been purchased in supermarkets at below the cost that it could be sold elsewhere. What is the government’s response to that?

Mr Sutcliffe: I think there are two issues. First of all on irresponsible promotions, we agree that there should not be irresponsible promotions. I have looked at the industry and I have spoken to the industry very recently about what they can do about stopping irresponsible promotions which encourage people to binge drink. I think there are things that we can do as a sponsoring department in terms of irresponsible promotions. I think in terms of the pricing issue that is something the Government has looked at as a whole and I continue to look at and we are expecting to hear very shortly decisions about the issues around pricing, the issues around the problems of alcohol which the Committee has looked at before and has been a live issue across government.

Q324 Mr Sanders: A local response, led by the police, which went to pubs and clubs, falls down because the view is that there is another sector that is not playing ball and nobody locally has control over the supermarkets. That has to come from a national lead and it really needs everybody to work together at the same pace. There does not seem to be anybody leading that movement to pull everybody together to move at the same pace to get the supermarkets to stop undercutting the price of alcohol to below its cost price because once that is resolved then the pubs and clubs will pull in and say that they will start to engage in this process of more responsible pricing policies.

Mr Sutcliffe: You may remember the prime minister held a summit with the supermarkets earlier in the year in terms of issues around the sale of alcohol as part of the overall strategy of dealing with problems relating to alcohol. These are being looked at within government but we are not in a position to give any announcements immediately.

Q325 Philip Davies: Can I ask you what you deem to be an irresponsible promotion?

Mr Sutcliffe: Those that are sometimes linked with football matches, as much as you can drink before the first goal and things like that which encourage people and it depends on which football team you watch how much you drink! Things like that that encourage unsafe and unfair practices.

Q326 Philip Davies: Do you not accept that with these so-called irresponsible promotions it is not the promotions that are irresponsible, it is the people who are actually abusing those promotions who are the irresponsible ones. The vast majority of people who go into pubs for a happy hour or go where it is half price for an hour or whatever it might be—I know a lot Conservative functions and I am sure Labour Party functions are the same—where people buy a ticket and included in that is all the drink they have for the evening as well. These are supposedly seen as irresponsible promotions, but what evidence is there that the overwhelming majority of people abuse these things? My contention would be that the vast majority of people who go for a drink when there is an offer on or when it is half price or when the drink is included in the ticket are perfectly decent, law abiding, honourable people who do not go out on a binge drinking spree, they drink responsibly and are a bit grateful that somebody has actually reduced the cost for them. Why should my constituents, who are perfectly decent, law abiding and responsible drinkers, have to pay more either at the supermarket or in a pub simply because a handful of yobs cannot take their drink and insist on abusing the system?

Mr Sutcliffe: I certainly agree there is a certain amount of personal responsibility and the health promotions and advertising campaigns that we have had within government to expose the dangers are important because it is about personal responsibility. What is encouraging for me is that the industry themselves have seen that irresponsible promotions can lead to problems. That then causes problems for the business. I am quite pleased that the industry itself is looking at what can be done in terms of how it sees problems. Unfortunately, though, there are increasing problems where people, perhaps because of the economic situation, are promoting alcohol in an irresponsible way. I think they should act on that in the interests of everybody.

Mr Cunningham: The Department of Health and Home Office are leading a review on price promotions. What you have just raised is precisely the debate about the evidence, what the effect and impact of these promotions are and the extent to which it would be appropriate either to have mandatory arrangements that apply to every premises that sells alcohol or whether it should be targeted on premises where those promotions cause problems, which would not be everywhere. The effect of a promotion in a restaurant might be quite different from a pub in certain circumstances. That is being looked at very carefully and eventually we will have a decision as to the right way to go to address this, but the underlying better regulation principles still apply to it, which are that any regulation around that should be necessary, proportionate, targeted and it should relate to evidence of the actual social harm we are addressing.
Q327 Philip Davies: Would it not be extraordinary at this particular time when many families are struggling and are in a difficult financial position that their government could be forcing them to pay more for buying some alcohol at the supermarket or when they go down to the pub for a drink? Do you not think that most people would find that extraordinary and most people would ask can we really expect to see a huge reduction in people getting drunk? If people are determined to get drunk they are going to get drunk whether or not there is an offer on at the time. It is the people who are getting drunk, it is not the promotion that forces them to get drunk.

Mr Sutcliffe: That is why the debate is about what the proportionate response should be. If it is clear that a promotion is causing more people to be drunk, is causing problems in a particular establishment, then it is right that we should act and it is right there should be a response to that.

Q328 Mr Sanders: There is also a social cost, the taxpayer is having to pick up the bill of cleaning up afterwards, policing these people, treating them if they need medical attention.

Mr Sutcliffe: I agree and that is the wide-ranging debate there is about the issues around alcohol and the abuse of alcohol. Certainly from the DCMS perspective we want things to be proportionate relating to the actual harm that is being caused.

Q329 Chairman: One of the key objectives of the Act was to streamline procedures, reduce bureaucracy and lower costs. You will have heard NOCTIS giving evidence immediately before you where they talked about the costs and they said they simply have not seen the savings materialise to the extent the government claimed, and in particular they raise the question of the requirement to advertise in local papers. Are these things that you are sympathetic to? Do you propose to look for ways to reduce bureaucracy further?

Mr Sutcliffe: We would say that the costs that were saved were independently audited and we believe that savings have been made. We estimate that to be around £99 million a year. Certainly there are issues and during the review of the Act in March we clearly said that we needed to look at areas of concern of which bureaucracy was one, advertising, looking at simplifying form filling and things like that and hopefully we will be making announcements in due course.

Mr Cunningham: The savings that we described in red tape costs in the evidence that has been given to the Committee were validated by an independent panel which includes people from industry. Indeed, one of the people on that panel is a member of the legal firm for which the person who just gave evidence immediately before you was a member of. I agree and that is the wide-ranging debate there is about the issues around alcohol and the abuse of alcohol. Certainly from the DCMS perspective we want things to be proportionate relating to the actual harm that is being caused.

Q330 Philip Davies: Following on about the bureaucracy and the cost, is how it has had an impact on sports and social clubs because many sports and social clubs—whether they are working men’s clubs or sports social clubs—claim that the cost burden from the licensing fees are killing them. I think one of the working men’s clubs in their evidence actually said it was killing them. When Richard Caborn, when he was a minister, said in a normal question session that “the vast majority of sports clubs will fall in a band between about £70 and £100”. According to a survey carried out by the Central Council of Physical Recreation of 2430 sports clubs they found that the majority fell into fee bands B and C, meaning their application fees and annual renewal fees are £190 plus £180 or £315 plus £295. Do you accept that for many sports and community clubs and social clubs that the Licensing Act has had a huge impact on their costs?

Mr Sutcliffe: First of all I think we all recognise the unique nature of sports clubs and we would want them to grow. That is why we have looked at a variety of schemes that support the sports clubs. I think in terms of the Licensing Act the difficulty is that we are talking about alcohol and the subsidising of alcohol. It is interesting that we carried out work which shows that the closing time of premises on a Saturday night suggests that one in ten members’ clubs are now using that facility as opposed to one in fifty before the Act. So clubs are benefiting and during the review of the Act in March we clearly said that we needed to look at areas of concern of which bureaucracy was one, advertising, looking at simplifying form filling and things like that and hopefully we will be making announcements in due course.

Mr Cunningham: The Independent Licensing Fees Review Panel reported in 2006 that it found no evidence that any amateur sports clubs had closed because of the licensing fees and did not recommend a discount to sports clubs.
Q332 Philip Davies: Do you not think it is wrong that volunteer-run sporting and social clubs are treated the same way as commercially run premises? Do you not accept that there should be some distinction between those two?

Mr Sutcliffe: I think this is one of the problems in terms of the discussion that was had around the time of the Act.

Mr Cunningham: Rules governing fees and charges do not allow cross-subsidisation. We cannot ask pubs to pay for the costs associated with the system as it applies to a rugby club. As such we have to look at what the actual costs are and that is the fee that we should be charging. That is what the Independent Fees Panel were doing; they were looking at whether the costs were actually lower in respect of, say, sports clubs compared with certain types of pubs, accepting there is a variation based on rateable values and that kind of thing. The conclusion that they drew—they were completely independent of us—was that there was not a case made on the evidence presented by the clubs for them being discounted in some way. If there was a discount it would have to be paid by government.

Q333 Philip Davies: Surely there is a distinction between a commercial pub or club which is being run simply to make a profit and a volunteer sports social club which is not specifically there to make a profit but simply to provide a service to people who are actually using the facilities at the end of a game or at the end of a match. Surely the government must recognise that they are two very separate entities.

Mr Cunningham: We are not allowed under Treasury rules to charge what you might put in terms of what somebody ought to pay or what somebody is capable of paying. We are supposed to look precisely at what the costs of the service are for the regime.

Q334 Philip Davies: But you are the government so you can change the rules if you do not like them. It is no good hiding behind the rules; these are your government’s rules so presumably the rules can be changed.

Mr Sutcliffe: The rules are to be fair and proportionate and there would be a counter-claim; that is why the Independent Fees Panel look at the validity of a case that is being put.

Q335 Philip Davies: That still does not get round this point that the government at the time—I appreciate it was your predecessor saying this and not you, Gerry, so I am not holding you personally to account for this—stated that the vast majority of sports clubs would fall within a band between £70 and £100. That quite clearly is not the case. If that was the government’s intention that sports and social clubs would fall within that kind of figure—and they are not—surely the argument is that the government should do something about it to make sure that they do fall within the kind of price band that the minister at the time clearly anticipated.

Mr Sutcliffe: We will keep those things under review and if there are opportunities then we will look at that again. Clearly we do feel that sports clubs are benefiting from the Act as well in terms of the hours that are available for them and which they are taking up to increase their turnover and increase their profitability. I do take the point and it is something that we would be prepared to at least have a look at.

Q336 Chairman: Can I turn to the issue of live music? You have probably heard some of the evidence we received from Feargal Sharkey a couple of weeks ago. One of the things which he very strongly objected to was the fact that applications for live music were being judged on whether or not they might lead to increased public disorder. Do you think that that is a consideration for live music applications?

Mr Sutcliffe: I think there has to be a balance struck as we have tried to say through a proportionate approach to the Act where the local communities have to be involved in terms of what goes on within the area. Statistics have shown that there has been a 7% increase in terms of the premises with a live music permission on their licence but there has not been what we thought would happen, an increase in the number of premises. We think that is down to a number of reasons, not particularly the Licensing Act but factors such as the suitability of premises, the lack of demand and simply an unwillingness to put out entertainment in the current climate.

Q337 Chairman: On this issue of disorder do you consider that disorder is a factor when judging applications for live music?

Mr Sutcliffe: It is a contributory issue that needs to be looked at certainly.

Q338 Chairman: Feargal Sharkey and UK Music argued very strongly that there is no evidence that there is any disorder associated with live music performances.

Mr Cunningham: There is evidence that certain live music performances do give rise to disorder. The question is proportionality. There will be certain types of event and it may be certain forms of live music which do not give rise, but I am quite certain if you had local authorities and the police sitting here asking them the same question they would say that certain events do give rise to issues of public order. Therefore it usually is a consideration for a licensing authority to look at. To change the regime in the way that Feargal would like us to do would require primary legislation. We have the reform order route available and ministers are looking at whether something could be done in terms of exempting some aspects of live music. The problem is that undertakings were given during the passage of the bill which makes those orders possible, that nothing controversial would be brought before the committee which should be left for full scrutiny by Parliament through the ordinary primary legislation route. One of the difficulties with this area is that we do know from our own regular contact with the licensing authorities that there are a very large number that are worried about a proposal which would be a sweeping exemption for live music. It is quite a difficult issue.
Q339 Chairman: Leaving aside legislation which obviously creates the same difficulties, another point that Feargal Sharkey made was that in actual fact local authorities and some police forces are exceeding the requirements of the existing legislation and imposing conditions which are far more onerous and unnecessary than were ever intended. Do you accept that that is the case?  
Mr Sutcliffe: Again it goes back to the initial comment about consistency of approach between the different authorities and different police forces and that is why we need to try to get to a situation where we can share best practice. I think there are some extreme examples that Feargal shows that would not be acceptable, but there are issues again about interpretation of what live music is as well and that is a consideration. We are obviously trying to work to make sure that the intentions of the Act are delivered. That is why we are looking at rehearsal spaces, that is why we are looking at supporting live music in different ways.

Q340 Chairman: To give an example, a requirement which was quoted to us of having to supply the names, addresses and telephone numbers of every single performer before a licence could be granted, you would not regard that as a reasonable request under the Act.  
Mr Sutcliffe: I personally would not but I stand to be corrected.

Q341 Chairman: You are the minister.  
Mr Sutcliffe: Ministers do get corrected every now and again.  
Mr Cunningham: I think I would start by saying that personally I would not think that was reasonable. However, it is a devolved system and the intention is that the decisions should be made by locally elected people following representations made by police. So if it is a condition on a licence and it was not volunteered, then the police can put the case to locally elected representatives who decided it was necessary for the achievement of one of the licensing objectives. It is not really for us to say that they are wrong.

Q342 Chairman: You have produced guidelines for local authorities and certainly it was the view of UK Music that you could amend the guidelines to make it clear that this was not a requirement.  
Mr Sutcliffe: Again it is this proportionality and this ability to make sure that the decision making is local. In the areas of best practice that are agreed with interested stakeholders to make sure that you get the outcome that you want to achieve, which is to see an increase in live music. I think we can be of assistance but I do not think it should be us who decide.

Q343 Chairman: Are you going to look at the guidelines to see if you can make it clear that some of these requirements are not necessary under the Act?  
Mr Roberts: The guidance was last reviewed last year. Obviously there will be a time when we look at that again within the next couple of years.

Q344 Chairman: Do you have any present plans to do that?  
Mr Roberts: Not at the moment, no. The other factor to bear in mind is the Local Better Regulation Office which has just been set up and part of its role will be to work with authorities for all sorts of regulations. So again we want to have discussions which might mean that it can act a bit more immediately really to intervene in these sorts of cases rather than wait for guidance that has to take some time to develop.  
Mr Cunningham: In the form that it is understood, guidance is guidance. The authority must have regard to it but they can depart for local reasons. It is not a guarantee.

Q345 Chairman: It is not a guarantee, but it would help.  
Mr Cunningham: Indeed, absolutely. The minor variations arrangements that we hope to bring in if Parliament agrees will be a significant benefit for live music because there will be an opportunity for live music to be added to licences as a minor variation as long as the authority is satisfied the impact would be minimum.

Q346 Mr Sanders: The purpose of changing the law was to try to involve people more in decisions. I think there is perhaps a bit of a disappointment that maybe more people could have availed themselves of the opportunity they now have to comment on licences. One area that is particularly deficient here is in the temporary event notices where there is absolutely no opportunity for the public, either directly or through their public representatives, to make any representation about a temporary event notice. Irrespective of whether it was in favour or against a temporary event notice it seems that there is a democratic deficit there. Would you be prepared to look at that again and see if there could not be some way that bodies other than the police who are only looking at this in very strictly defined ways, could have a say on a temporary event notice application?  
Mr Sutcliffe: I am pleased you have pointed out that the police do have the opportunity to object. We believe that the temporary event notices was meant to be a light touch about giving support to those bodies who would want to achieve the benefits of the temporary events with all the restrictions that are around. It is very tightly controlled in terms of what can happen over a period of time, the number of people that need to be involved, the amount of hours that can take place. Again there are restrictions on the number of temporary event notices that people can have as well. In discussions with the LGA we are looking at what we can do in terms of minor variations to that. I think that the principle behind the temporary events notices was to be light touch and if there were areas of grave concern then the police would have reasonable authority to be able to say.
25 November 2008  Gerry Sutcliffe MP, Mr Stuart Roberts and Mr Andrew Cunningham

Q347 Mr Sanders: It was interesting when we took evidence that the police and the LGA both agreed that there should be a say for the community and, further, there were comments from the police that the time in which they are given to make a comment plus the narrow focus in which they can make an objection makes it actually very difficult for them to object, in other words to prove that there could be disorder if this temporary event notice went through. The real issue is the lack of democracy and communities feeling that businesses are just able to go ahead and do whatever they want without having taken into consideration the impact that that notice may have, even though it may be for just a night or for a period of weeks.

Q348 Chairman: Although it was pointed out to us that you can move the bar into different positions within a hall, for instance, and it will then allow you to apply for a whole lot more notices.

Mr Cunningham: Anecdotally that has been argued many times and nobody has ever actually found somewhere where this has been done successfully.

Q349 Chairman: Do you not have any evidence that that happened? It was told to us as part of the evidence we have received.

Mr Cunningham: No, although it is an issue with gambling but it is not an issue with licensed premises.

Q350 Chairman: Gerry, you referred to the fact that there was a limit on the number of events which an individual could apply for. One of the points made to us was of course there is nothing to stop an individual applying for the maximum in one area, moving to another and applying again. The reason he can do that is because there is no national database for personal licence holders. Is that not an omission which should be put right?

Mr Sutcliffe: We have looked at this and obviously in the climate surrounding national databases you have to make sure it is cost effective and appropriate. We are not convinced yet but it is something we continue to keep under review in terms of what can be achieved. We do not think the case has been made yet.

Q351 Chairman: It clearly is something of a loophole, particularly if somebody loses their licence from one authority because of misdemeanours, the fact that there is no mechanism to stop it going somewhere else.

Mr Cunningham: We have been asking for actual evidence of these instances where, because of no national database, people have been able to evade certain things, cases where the police feel this has happened or indeed the local authorities do. Nobody has been able to present any evidence. The issue for us in building a database is getting a decent business case together. If we have a decent business case we have always said we would look to take this forward.

Q352 Chairman: The police have told us they would like one.

Mr Cunningham: If they would like one and if they present the evidence that is necessary then that database could be taken forward. The powers in the Act are there to do it, if necessary. As it stands nobody is actually able to evidence the abuse that they feel is occurring. Unfortunately licensing is plagued by anecdote.

Q353 Chairman: Surely to some extent the reason there is no evidence is because there is no database so we do not know about it. There may be a lot of people who lose their licence in one authority, move to another and then acquire one but you do not know about it because it is completely hidden, the database is not there.
Mr Sutcliffe: If there were a significant number of cases it would get into the public domain and that does not appear to be the case. We are not ruling it out and we are not saying it will never happen, but we want to be sure that there is a suitable case for us to go forward for what will be quite intense results.

Q354 Chairman: Another point raised with us, which is a specific one, is that an interim authority licence can only last for seven days. In the particular case where a licence holder dies that is a very short period. It was put to us that there appears to be no reason, particularly in the case of a bereavement, why it could not be longer. Are you sympathetic to that?

Mr Sutcliffe: We are sympathetic to that, yes.

Mr Roberts: There has to be a limit of some sort because you cannot have a premises operating without a named licence holder, so you would have to limit it somehow. However, there are things you can do rather than lapse the licence straightaway. You could suspend it after a period so it could be brought back in again when the family get round to transferring the licence. The problem is that is primary legislation so we would have to look through the LRO process to do that. We are trying to tie this up with all the application process things that we are looking at.

Q355 Chairman: That is something you recognise the case for.

Mr Roberts: Yes.

Q356 Chairman: The last area I would like to cover is circuses. What are you going to do about circuses?

Mr Sutcliffe: We understand that there is a difficulty there. It is a problem area in terms of if there are licensable activities under the legislation and you require a licence then you have to make sure that people do that. There is an issue around the transfer of licences in terms of a portable licence when circuses move from venue to venue which we have some sympathy with and we want to look at to see whether there is anything we can do to assist there.

Q357 Chairman: The circus tell us quite specifically that they were informed by the government in the early stages of the licensing bill considerations that they need not worry because they would not be covered.

Mr Cunningham: Just to correct that, they were told in the year 2000 by someone at the Home Office that the government then had no plans to include circuses in the arrangements. Before the bill procedures were completed when Kim Howells was Minister for Licensing he went into the issue, discussed it with the circuses and decided that there was a case for licensing circuses. They did have the opportunity during the bill to put their case, to argue for exemption and the government did actually reject it. Essentially circuses per se are not licensed; it is if they engage in licensable activities, such as a performance of dance.

Q358 Chairman: You have issued guidance which suggests that the kinds of things that go on in circuses are licensable activities.

Mr Cunningham: Yes. If they put on a performance of dance they are no different than a variety show.

Q359 Mr Sanders: One piece of evidence we received was that different local authorities are treating circuses differently. Is it possible that the guidance needs looking at to ensure that you cannot have those wild variations of interpretation?

Mr Roberts: The references in the guidance that the circus industry told you they did not like were put in specifically to try to help clarify the position so it does leave us in a difficult position. It does depend on the activity and there will inevitably be some difference of interpretation and some authorities perhaps would rather just not licence circuses and are happy to leave it at that. I think the thing we are looking at in terms of a portable licence might help resolve this but that is something we are going to have to schedule alongside our other simplification measures and we see the whole issue around all the application forms and advertising and electronic applications being a priority that will actually benefit circuses as well as all the other people involved in the licensing regime.

Q360 Chairman: The existing position where half the local authorities seem to think that they do not require a licence and the other half do, is that not an entirely satisfactory position.

Mr Roberts: I am not sure that it is as many as half; I think it is a minority who do not think they do.

Q361 Chairman: There are quite a number that do not.

Mr Roberts: There are some who choose or prefer not to.

Q362 Chairman: The circuses were understandably reluctant to tell us which because they thought you would then write a rude letter to them and tell them they should.

Mr Roberts: No, that is not true; we would not do such a thing. I think if a public nuisance issue arose when there was a circus in a residential area then some of those authorities might have to look at again at whether they should be licensing it or not. A circus does occasionally come up as an issue in terms of public nuisance. I think the other objectives really do not tend to apply in practice.

Q363 Chairman: The suggestion that a single licence might be issued by the home authority of a circus, wherever that is, which could then be carried with the circus around the country, are you pretty sympathetic to that?

Mr Sutcliffe: I am very sympathetic to that, it is just a case, as Mr Roberts said, of the timescale when we can do that set against the other variations that we want to put in place.

Q364 Chairman: What is required in order for you to do that?
Mr Roberts: We would certainly have to assure ourselves that such a system would work, would be practical, could be run by the licensing authorities and that the health and safety side of things were happy. We would have to look at whether a notice period had been built in because local authorities tell us that that is the one main advantage of being licensed, that they know the circus is coming with sufficient notice to get experts in to do the inspections. We would have to develop all that and we would have to look at a slot to do it through primary legislation.

Q365 Chairman: One of the points the circuses made to us is if, for instance, for a particular reason, they have to cancel at the last minute (they gave the example of the death of Princess Diana when they felt that it was inappropriate to continue to hold a circus at Windsor so they moved very quickly to an alternative location) then if they have to give notice they cannot do that.

Mr Roberts: If the public authorities tell us they need that notice to assure themselves on things like the health and safety of the audience then I think we have to take notice of that and consider that quite seriously.

Q366 Chairman: Health and safety comes under a different inspection regime.

Mr Roberts: It does, but they still need the notice to have the qualified inspectors to do the inspections. Circus tent erection is quite technical stuff so a lot of small authorities will not have those people on hand, particularly if they cover a county, so they do need a period of notice. How long that would be I think is what we want to look at and what is reasonable. The other point would be that there are still many authorities which licence public land which already allow circuses on them so there is some flexibility there.

Q367 Chairman: The fact that there are already some places they can do rather undermines the case that you need a great notice period for the remainder.

Mr Roberts: I think it depends on the authority. I think some authorities will be well equipped and well resourced to have those kinds of expertise on hand, but the smaller, rural authorities probably will not have.

Q368 Chairman: If you were to bring in this portable licence what legislative changes does that require?

Mr Cunningham: It is primary legislation.

Q369 Chairman: So there is not much chance of it happening.

Mr Roberts: I would not say that, no.

Mr Cunningham: Unless we could do it with a legislative reform order, but again it depends how controversial it actually is and, as you said, there are obviously a significant number of local authorities who want to retain some control and not hand it to a home authority. If they could to be persuaded then an LRO might be a possible route.

Q370 Chairman: You have local authorities saying that they wish to retain the requirement to have a licence for every circus that arrives in town?

Mr Cunningham: There are mixed views from local authorities.

Q371 Chairman: The local authorities, when then gave evidence to us, did not seem terribly interested; they did not really want to know about it.

Mr Sutcliffe: We shall pursue that further.

Chairman: I think that is all we have, thank you very much.
Written evidence

Memorandum submitted by the British Music Rights

BACKGROUND

1. British Music Rights is the consensus voice of Britain’s 60,000 composers and songwriters, music publishers and their collecting societies.1 Our interest in this CMS select committee inquiry arises from our support for measures that will lead to an increase in the opportunity to partake in and the number of performances of live music in the UK.

2. Feargal Sharkey, chief executive of British Music Rights, was formerly the chairman of the Live Music Forum, which was tasked by the Department of Culture, Media & Sport to monitor and evaluate the impact of the Licensing Act 2003 on the performance of live music. The Live Music Forum published its findings and recommendations in July 2007. Mr Sharkey is at the disposal of the CMS Select Committee to provide supplementary oral evidence to this inquiry either in his current capacity or as the former chairman of the Live Music Forum.

3. The live music sector is an important contributor to the UK’s economy and is fundamental to our cultural health and wealth. Total GVA in music is £6 billion, or 1% of the UK’s GVA; of which 37% is due to live performance.2 The live music scene has been in recent years the fastest growing part of the music industry, employing around 45% of the workforce.3

4. Career progression for many music creators typically includes the performance of music in small venues at the early stages of a career before advancing to larger capacity venues as musicians grow a fan base and hone their talent. Opportunities for live performance in small venues therefore provide essential seeding for the music sector as a whole.

5. Income received from public performance is an important source of revenue for creators, and strong growth from public performance income is increasingly important in the light of the decline in revenue from CD sale royalties.4

6. As well as providing the foundation for live music created in the UK to be performed in large venues around the world, live music in small venues itself generates significant income for music creators, performers and venue proprietors. The Performing Right Society estimates that as much as a third of its public performance income from live music comes from small venues, including those in the hospitality sector. Increasingly, hospitality venues recognise that live music is a more positive way to attract customers compared to methods such as drinks promotions.

7. The Government’s stated policy is to support the growth of the UK’s live music sector and nurture the creative capabilities of the next generation, towards the goal of making the UK a global hub for the creative industries. We share the Government’s assessment that “nurturing young bands and artists and making sure they have a place to play is absolutely essential,”5 and that “maintaining the health of the vibrant [live music] sector will depend to a significant degree on identifying, encouraging and nurturing talent at the grassroots level”.6

8. We applaud efforts to support the continued growth of the live music sector, which has a positive knock-on impact upon the 60,000 songwriters and composers whom we represent. In addition, small venues play a vital role in sustaining the live performance of certain genres of music, such as folk and traditional music.

IMPACT OF LICENSING ACT ON LIVE MUSIC

9. According to the findings of the Live Music Forum, the Licensing Act has had an overall neutral impact on the number of venues seeking to put on live performance: “the overall conclusions of the Live Music Forum, based on all the evidence we currently have before us, is that the Licensing Act has had a broadly neutral effect on the provision of live music”.7

10. This conclusion was supported by a follow-up study commissioned by DCMS and carried out by BMRB in December 2007—“The Licensing Act does not appear to have been a major factor in decisions relating to whether or not venues provided live music”.8

---

1 Our member organisations are: Music Publishers Association; British Academy of Composers & Songwriters; MCPS-PRS Alliance.
4 According to the PRS half year results published in August 2008, public performance income—the licensing of leisure outlets and work places playing music—was driven by continued strong performance from live pop concerts (up 5.4%) and improved licensing activity.
11. Given the Government’s stated aim to “maximise the take-up of reforms in the Licensing Act 2003 relating to the performance of live music; and to promote the performance of live music in England and Wales generally”, the Licensing Act appears to have failed in delivering this aim.

12. The Live Music Forum report concluded: “it is also true to say that the Licensing Act has not led to the promised increase in live music”.

13. Likewise, the follow-up study found that the potential for growth in staging live music had failed to be grasped and is still there for the taking: “...four in 10 venues not regularly staging live music said they would consider doing so in the future. That equates to more than a fifth of all venues in the survey, suggesting the possibility of substantial future growth in the proportions of venues staging live music”.

**Reasons for the Failure of the Reforms to Increase Live Music**

14. Research has shown evidence of a perception that many people—from some residents groups to local authority officials to the police—have biases as to the impact of live music on the four licensing objectives.

15. DCMS’s own research, commissioned through the Live Music Forum and carried out by Mori, found that 77% of all objections to applications for live music came from local residents or their representatives, with 68% of those objections specifically relating to concerns about the noise level of music; or noise levels from customers.8 There seems to be an automatic assumption that live music, without question, will give rise to a noise nuisance.

16. However, the Live Music Forum’s investigations into actual noise complaints made showed that the vast majority of noise complaints relate to music from a domestic premise (a neighbour playing music too loud); this is estimated to account for 90% of noise complaints. Other domestic noise complaints, barking dogs, and burglar alarms all received more complaints than the generic category called “entertainment noise from commercial premises”.9

17. We remain concerned that the gap between the commonly held perception that live music will likely create a noise nuisance—and the reality that noise complaints about entertainment premises is relatively rare—remains unchallenged. Indeed, the misconception about the negative impact of live music on the local environment seems to be fuelled by those in authority, such as the police.

18. The recent case of Wiltshire police, who persuaded magistrates to order the cancellation of the first day of the Moonfest music festival because of fears that the appearance of Pete Doherty would lead to public disorder, shows how the Licensing Act is open to abuse. The Wiltshire constabulary used Section 160, which provides that premises may be closed in an area where there is expected to be disorder to cancel the show. This last minute court case came weeks after the original application which included security provision had been submitted by the organisers of Moonfest, scrutinised by local Responsible Authorities including the police, and approved.

19. The Act states that a magistrates court may not make such an order unless “it is satisfied that it is necessary to prevent disorder”. The order was granted on evidence of an incident at the Royal Albert Hall, captured and posted on YouTube, whereby fans climbed onto the stage in an attempt to embrace lead singer Pete Doherty. There was no suggestion of any violence; only adulation. The incident reflected far more the inadequate security arrangements of the Royal Albert Hall than the propensity for violence to erupt as a result of the performance of live music.

20. The chief superintendent of the Wiltshire constabulary is quoted as stating: “We became concerned because the organiser did not appear to have due cognisance of all the risks. We carried out an analysis of what Pete Doherty and his band does. What he does as part of his routine is to gee up the crowd. They speed up and then slow down the music and create a whirlpool effect in the crowd. They (the crowd) all get geed up and then they start fighting”. In this case, the Wiltshire police, and the local magistrates, demonstrated a wholly unacceptable bias against popular music in blindly linking the exuberance of fans in one venue in a different city to the likelihood of violent disorder.

21. Such an automatic and unsubstantiated link between live music and the likelihood of violent disorder reveals the yawning gulf in the police and magistrates' understanding of popular music culture. Had a similar interpretation and application of the Licensing Act been applied over the past 50 years, it would have prevented the majority of live music events throughout the history of popular music, including practically every concert by the Beatles, the Rolling Stones, The Who and every other act to follow since.

22. Nor is there any provision for appeal against biased rulings and applications of the law, save for judicial review. We do not consider the option of judicial review to be a proper or acceptable option, given the time and expense involved, particularly as the vast majority of small premise owners and managers have meagre resources with which to fight a case in the courts.

23. The Government itself is also partly responsible for propagating the fallacy that live music frequently poses a societal threat by pandering to the fears of the police and public. Inclusion of live music within the parameters of the Licensing Act officially situates it as a potential threat and menace to public safety and
good order. Those in the music industry have consistently argued that live music should not be lumped into regulations intended to deal with alcohol, crime and disorder but instead be on a par with regulations governing the use of juke boxes and wide/projected screen sports.

24. In a DCMS press notice dated 17 December 2007, Former Secretary of State James Purnell stated that “The live music industry is clearly booming but there hasn’t yet been the increase in live music in small venues such as restaurants that we had hoped for. I want to do everything we can to support live music. To help ensure that, we will explore exemptions for some venues. Clearly we’d only be looking at exemptions for events that don’t cause public nuisance or compromise public safety [. . .]”.

25. We recommend that the Government honour its commitment and explore the benefits of live music being removed from the regulated entertainment provision; and we recommend the Government cease qualifying its support for the promotion of live music with misleading references to safety and nuisance in the same breath.

26. Apart from the bias against live music, there may be bureaucratic reasons why the Licensing Act has not heralded an explosion in premises seeking to stage live music. An application to vary a premises license specifically for live music would incur average application costs in the region of £1,500\(^\text{10}\)—a considerable outlay for small premises. Around 39% of licensed premises do not have a license that provides for live music. The Live Music Forum report concluded that “the requirement to repeat all the application process to obtain a license for live music would appear to present a considerable and unnecessary regulatory burden. If real progress is to be made in encouraging some, or indeed any, of those 39% of smaller licensed premises currently not licensed for live music to vary their licence, then we can see no alternative but to reduce the burden of the application process”. \(^\text{11}\)

27. The Government is currently consulting on proposals to introduce provision for premise owners to make “minor variations” to their original licence, stating that its intention is that “applications to vary a licence for live music should benefit from the minor variations process . . .” Our key recommendation is that live music be removed completely from the provisions of the Licensing Act, as stated in paragraphs 25–26 above. That said, we do not believe that the minor variations proposals, left unamended, will benefit applicants who wish to vary a licence for live music. We have made representations to the DCMS in their current consultation to make a number of recommendations in the wording of the Order and in the wording of the accompanying Guidance Notes.

28. We also recommend that, as part of the simplification procedures, ministers allow applicants who have been rejected a minor variation should have the right to appeal to the local magistrates.

29. Finally, we strongly recommend that Government should commit to a periodic review of decision-making patterns on minor variations within a sample of licensing authorities to see whether patterns emerge on meeting statutory response times, and to uncover evidence of bias against live music.

September 2008

Memorandum submitted by The European Entertainment Corporation

The European Entertainment Corporation is the largest operator of travelling tenting circuses in the UK. We promote the tours of The Moscow State Circus and The Chinese State Circus, both of which tour for 40 weeks in each year and also the Continental Circus Berlin which tours for a shorter period. All of our circuses will usually visit a different town each week, although occasionally they will visit two towns in a week and very occasionally stay in a town for two weeks. The seating capacity of our tents is above that permitted under the Temporary Events procedure and consequently we require a Premises License for each of our circuses for each week that we operate. Our circus tours, which are planned on a three year cycle take us throughout England and Wales and for a few weeks into Scotland where the licensing system is much easier because it is largely based on the Health and Safety standards of that particular circus and not of the circus site.

Some of the circus sites which we have used since the introduction of the Licensing Act have been licensed by the owner, usually the Local Authority, but a larger number are not licensed and we have had to make our own applications. We have never had a licence refused and there appears to be little concern about the way reputable circuses conduct their business.

We are fortunate that, unlike some circuses, we operate a permanent office but the staff needed to keep up with our licensing applications and the amount which we have spent both on making and then advertising the application has been excessive. It must be remembered that we are having to make a separate application for every unlicensed site which we use, often three in any one week, whereas premises selling alcohol only need to make one application. This is unfair and results in a considerable financial burden that my company has had to carry. We are still applying for licences either because we are finding alternative circus sites which we want to try or we are visiting smaller towns where our circuses have not previously been seen.


\(^{11}\) Para 3.87 of the Live Music Forum findings and recommendations, July 2007.
You have received a submission from our trade body, The Association of Circus Proprietors of Great Britain, which I wholeheartedly support. It highlights, in addition to the cost of licensing which the industry is having to carry, the problem of the lack of flexibility. There are situations where a circus site becomes unusable because our visit follows exceptionally wet weather but we are unable to move to an alternative site because we are out of time to apply for a Premises Licence for it. The overheads in running each of my circuses runs into tens of thousands of pounds each week and these expenses are largely the same whether or not we are able to open for business. It is not just the wet weather that can make the inflexibility of licensing unfair, there are often other factors. The circus routes are planned a long time in advance so that we minimise the distance which we have to travel between towns. Often a Local Authority will, at very short notice, ask if we would change our dates because they realise that we are going to clash with an event that they are organising in the same park and as our business is dependent on a working relationship with those Councils, we have no option but to agree. Instead of being able to move to a different site in the town, which we would have done prior to licensing, we have insufficient time to apply for a licence and must travel to a town where we know there is a licensed site. Similarly, we are operating in a very competitive industry and many towns have more than one circus site. It is not uncommon for us to find that one of our competitors is using a site in a town which we were planning to visit only two or three weeks later. In commercial terms, we cannot follow a circus within such a short period and again we have to look for an alternative, and often less satisfactory, site but we are limited because it must be one which is already licensed for a circus. There cannot be any other sector of the leisure and entertainment industry which has been so restricted by the Licensing Act in the ordinary course of it’s business.

I have been operating circuses for almost forty years and I cannot recall any problems which arose because circuses were not being controlled through licensing. As most of our sites are owned by Local Authorities, any control is contained within the agreement for the use of that site. At times, the Licensing Act has reduced my business, which is normally exceptionally well organised, to chaos.

I consider that the responsibility for all of these problems is with the DCMS. It produced legislation which does not state that circuses are licensable, but then in its Guidance notes says that because there is an element of music, circuses should be licensed. Music is only played to accompany acts as background to a display of circus skills and in two of my circuses I rely entirely on recorded music.

I hope the committee will understand that circuses are being licensed only through the opinion of the DCMS and that this licensing is too restrictive, too inflexible, too expensive and too onorous for this traditional industry which for several years has been struggling to survive.

September 2008

Memorandum submitted by Westminster City Council

Westminster City Council welcomes the opportunity to contribute to the DCMS Select Committee inquiry into the effects of the Licensing Act 2003. We intend to focus our submission on five elements of the inquiry—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, levels of bureaucracy and the performance of licensing services far beyond the level of funding by fees.

Our headline statement is this: In Westminster alcohol crime is declining. This results from the strong enforcement of cumulative impact policies. However, there has been a degree of temporal displacement. Offences are now occurring later on, into the early hours of the morning. The fact that crimes are occurring in the early hours of the morning has serious implications; not only does it cost more in terms of policing requirements, but the human cost of disruption increases with the lateness of the hour. This is in the context of its longstanding, extensive, late night nightlife and its policy approach of not increasing the numbers of “alcohol led” premises or their hours beyond midnight in areas with identified problems of crime and disorder.

As regards bureaucracy, despite claims by DCMS that the Licensing Act is “deregulatory”, all evidence suggests that it has in fact led to an increased bureaucratic burden for both applicants and administrators.

Key Findings

Public Nuisance and Night Time Offences

— Our analysis demonstrates that alcohol related crime and disorder is declining, this is because Westminster has adopted a strong policy approach to enforcement and is prepared to fund licensing services far beyond the level of funding by fees.

— The essence of this policy is to restrict new licences in the cumulative impact areas to exceptional circumstances—normally away from drink-led uses—and to give only limited hours extensions, not past midnight in remaining areas.

— Average numbers of offences per month have fallen by approximately 10% for both licensed premises-related offences, violent offences and late night violent offences.
— Licensed premises-related offences now peak between 10.00 pm and 11.00 pm, whilst violent offences continue to peak between 2.00 am and 3.00 am.
— Alcohol-related disorder (both by type and late night) has actually shown increases in numbers of incidents per month after the introduction of the Act.
— Alcohol-related crime and disorder has seen temporal shifts towards the early hours of the morning.

**Levels of Bureaucracy**
— Bureaucracy has significantly increased since the implementation of the Licensing Act.
— The Act does not allow for local discretion regarding the processing of licence applications, which only adds to the administrative burden placed on Licensing Authorities.
— Westminster is currently implementing electronic licensing in order to reduce the amount of time spent on processing applications, and to create a more streamlined and efficient system.

**Night Time Offences**

There has in general been a declining trend in licensed premises-related offences. Despite an increase in offences immediately post-introduction of the Act, offences have been in general below the mean for offences pre-introduction of the Act.

Since the implementation of the Licensing Act, there have been 1,363 licensed premises-related offences per month. Prior to the introduction of the Act on the 24 November 2005 there were roughly 1,409 offences per month (based on 20 months data) whilst post November 2005 this fell to 1,346 offences per month (32 months data).12

Considering all violent offences since April 2004, there has been a decrease in violent offences following the introduction of the Act. There were on average 444.6 offences per month prior to the Act, but this fell to 383.5 after the Act, a reduction of 13.7%.

There has in general been a declining trend in licensed premises-related offences. Despite an increase in offences immediately post-introduction of the Act, offences have been in general below the mean for offences pre-introduction of the Act.

It is worth noting that a number of alcohol-related incidents may not be directly linked to licensed premises but take place in the street. This may especially be the case in terms of violent offences.

Westminster has achieved the reductions in alcohol related crime and disorder by working closely with the Metropolitan Police who have changed their shift patterns to better cover the late night period and have mounted a number of operations and initiatives aimed at alcohol related and violent crime. This has resulted in a number of large drink-led premises in the heart of the West End being closed following review or changed to non-drink led use.

The City Council has developed strong partnership with the Metropolitan Police Licensing Teams co-located in City Hall and a process of targeted risk-based enforcement. These have led to jointly tasked approaches to problem premises giving rise to crime, disorder or nuisance incidents. This involves pro-active work to improve practice. On occasion, when this process fails, it has led to review and prosecution.

Westminster is committed to sustaining these successes, but without more legislative flexibility in the form of local fee setting and further changes to the guidance and regulation which would live up to local government’s place shaping role, important work to reduce crime in central London is at risk.

**Alcohol Related Disorder**

Analysis of alcohol-related disorder levels between April 2004 and June 2006 shows huge variations. The average number of offences has actually increased, from 282.8 per month before the Act to 294.8 after (an increase of 4.2%). However because of the high variance it would be difficult to assess whether this was an accurate picture of alcohol-related disorder. Other factors may have caused the substantial increase and subsequent decrease in disorder, for example the greater focus on licensing enforcement.

Over the whole period there is a small downwards trend in alcohol-related disorder, though to make a more accurate judgement of alcohol-related disorder it is necessary to focus on specific time periods as we have done for violent offences.

Looking at disorder between midnight and 4.00 am may help to give a more accurate picture of alcohol-related disorder. For example, we do not know if the street drinking code is used purely for our resident street drinkers or is also used for general street drinking-related disorder.

---

12 Please note that the month of November 2005 is completely included in the data prior to the introduction of the Act.
By looking at this type of disorder late at night we are likely to exclude the street drinking population but include other types of alcohol-related disorder that have been marked as street drinking. Rowdy and Inconsiderate Behaviour is also included as between midnight and 4am this type of disorder is highly likely to be alcohol-related and will help provide further help in assessing the extent of street-drinking before and after the Act.

There has been an even larger increase in late night alcohol-related disorder than overall alcohol disorder, with disorder incidents per month increasing by 21.2% (from 251.6 to 305). Again this is because of the large variation in incident levels from month to month. It is worth noting that most of the increase in late night disorder occurred prior to the introduction of the Act and that late night disorder has generally remained static since.

**Perception**

Facts and figures cannot provide the full picture of alcohol-related crime and disorder and public perception is key to helping us understand the full extent of alcohol-related crime and disorder before and after the 2003 Licensing Act came into force.

The City Survey only asks questions of people’s perception of alcohol disorder from 2006–07 onwards (though over the last two years perception of this being a problem has remained static).

The CivicWatch Survey shows that perception of “people being drunk and rowdy in public places” has increased slightly since 2004–05 when 18.9% of people put this issue amongst their top two or three concerns.

Perception of this issue as a problem increased to 19.9% in 2005–06 and then 22% in 2006–07. However a slight reduction to 21% occurred in 2007–08 and current 2008–09 figures (after two waves) show the year to date figures at 20%. Overall though there has been a gradual increasing trend in perception of the issue as a problem. Though whether this relates to the Licensing Act or other factors such as wider media reporting affecting public perception cannot be established definitively.

**Bureaucracy**

Despite claims by DCMS that the Licensing Act “deregulatory”, all evidence suggests that it has in fact led to increased bureaucracy for both applicants and administrators.

In order to apply for a licence, an applicant is required to provide eight copies of application form, and eight sets of plans. There is a significant administrative burden associated with this. The costs of processing applications far outweigh the cost of an application.

Below is a selection of examples where unnecessary bureaucracy hampers our ability to quickly process applications:

- Applicants are required to get prior approval in writing for a change of plan.
- The Licensing Act does not allow us to properly correct applications. If an applicant makes a small mistake, this technically renders the application invalid, requiring the applicant to start the process again.
- There is nothing in the Act that allows Licensing Authorities to apply discretion. We feel that a “slip rule” would make a tangible improvement to processing of applications, and would significantly reduce levels of bureaucracy.

In order to reduce levels of bureaucracy, Westminster City Council is currently testing electronic licensing. Our review of the licensing process identified £122,000 per annum projected savings through the implementation of online systems.

**The performance of live music**

Westminster is aware of concerns relating to the effect of the 2003 Act on the provision of live music.

The experience in Westminster is that the 2003 Act, in comparison with previous regimes, does not restrict the provision of live music in the course of promoting the licensing objectives. On the conversion and variation of licences when the new regime was first introduced, variations by pubs to retain the effect of the “2 in a bar” rule were granted in virtually all cases.

However, we are of the view that the provisions of section 177 of the Act, which seek to give some exemption for smaller venues from licence conditions in certain circumstances, are extremely tortuous, little understood by the licensed trade, and are largely irrelevant in promoting live music.

Notwithstanding that ad hoc live music events in smaller premises can be authorised by existing Temporary Event notices if two weeks notice is given, and more regular events by a premises licence, we would welcome the opportunity to comment on any proposals to replace section 177 with provisions which permitted unamplified music in small premises licensed for the sale of alcohol but not musical entertainment.
We believe that the licensing of public entertainment has led to an exemplary record in terms of public safety, and allows direct control of public nuisance and crime and disorder. Exemptions from licensing should only be considered in exceptional cases taking into account the risks which may be associated with the failure to promote the licensing objectives. For this reason, we believe no venue or event should be exempted from the requirement to be licensed for musical entertainment if it is unlicensed for the sale of alcohol, or provides for an audience greater than 100, or uses amplified musical instruments, or is provided outside a building.

Where any exemption from the requirement to be licensed for musical entertainment is permitted, the premises should remain subject to review procedures in the 2003 Act, and the licensing authority able to remove the exemption by modifying licence conditions.

September 2008

Memorandum submitted by Business In Sport and Leisure Limited

Business In Sport and Leisure is an umbrella organisation that represents over one hundred private sector companies and organisations in the sport, leisure and hospitality industry. Its membership is comprised of a mixture of leisure operators, the large majority of whom operate a licensed bar or other licensable activity even where it is not their primary business. BISL’s membership is presently in excess of a hundred and its members are valued either on the London Stock market or through private equity investment at in excess of £40 billion.

BISL develops policy through six Working Groups and these comments are a result of deliberations by the liquor Licensing Working Group and shared with the membership as a whole.

Overview

In 2000 the Government published the White Paper “Time for Reform: Proposals for the Modernisation of Our Licensing Laws” which set out a relaxation of the legislation on alcohol and entertainment licensing and was intended to reduce the burden of unnecessary regulation. Responsibility for the licensing of alcohol and gambling subsequently transferred to the DCMS and in 2003 the Licensing Act was passed. The then Secretary of State at the DCMS introduced the Act stating that it “would allow the responsible majority of people more freedom and choice about how they spend their leisure time and replace an out-of-date, mish-mash of legislation with a modern, accessible regime, responsive to the society it serves”.

BISL welcomed this policy which it believed would bring not only an improved hospitality offer to local communities and the tourism market but increased opportunity for industry to respond to those markets. Unfortunately in practice much of the promise of freedom and flexibility has failed to materialise, with a progressive hardening in policy towards the licensed trade reflected in the three main revisions of the associated Guidance published since 2003.

I would also draw your attention to the report of the Better Regulation Commission on the Licensing Act published in 2006 which had six recommendations for the reduction in the administrative and cost burden. Whilst some of these issues have been addressed such as the relaxation of a specified scale for plans and more recently a consideration of the de minimis exemption, others still have not and remain a massive burden on the sector.

Premises Licenses

The application process for a premises license is now a significant administrative and cost burden on the industry; a former single sheet application has been replaced by a complex document of over 30 pages and in many cases has now required applicants to seek professional advice for submission. The production of multiple copies for circulation to responsible authorities, coupled with the need to provide not only local notices but also newspaper advertising has significantly added costs to the already increased fee level. All of these points were raised by the BRC Report in 2006 which recommended that it should be the outcome of informing the local community which does mean that is mandatory.

The absence of a slip rule has been a regular complaint from operators and licensing lawyers alike. Whilst some authorities have taken a more liberal approach to the process and allowed amendments to deal with minor errors during the application process, many more have applied the letter of the law with consequent real administrative and cost penalties on the applicant. This was typified recently by an applicant who had met all the correct requirements of an application, including newspaper advertising, but whose local notices issued on blue paper had faded in the sun. Only at the end of the statutory display period was the applicant informed that a completely new application with the additional costs of re advertising was therefore required.

The lack of consistency is also borne out in the treatment of minor variations where some authorities already apply an adhoc policy of just accepting a redrawn plan of the premises whilst others require the full variation application process. BISL welcomes the current proposal for a new minor variation process and
hopes that it will be applied consistently to speed up changes to premises that are vital, in response often, to customer needs. Our members have always questioned however, why any variation procedure is required for alterations to a venue that will have no impact on the licensing objectives.

BISL is also pleased to note the present consideration within the department of a de minimis exemption for certain premises presently required by the Act to obtain a premises license, but would like to see the small bed and breakfast operator and the small voluntary sports club opening its bar perhaps just one night a week, added to the present list under consideration.

STATEMENTS OF LICENSING POLICY

BISL has noted with concern the very wide variation in local authority statements of licensing policy on which it has been consulted over the past five years. In many cases the policies are quite rightly strictly confined to meeting the licensing objectives as laid out in the Act. However, others have endeavoured to introduce conditions well beyond the scope of the Act. Recent examples have been the pressure applied by authorities within the Thames Valley for conditions to require the use of polycarbonate containers, instead of glass, whilst elsewhere membership of Pubwatch has been required even where the Pubwatch scheme had closed down.

Challenge 21 is becoming an industry norm as best practice but only in limited cases is it actually a condition on the premises license, breach of which becomes a licensing offence. BISL is aware of a London borough where the licensing authority are seeking to ensure that all premises within their area operate a Challenge 21 policy and to this end are asking all premises licence holders to sign a contract to this effect. The contract recites that its purpose is to assist in the promotion of the licensing objectives and retailing alcohol in a responsible manner and sets out various obligations on the part of the licence holder. It also goes on to require that in the event of breach, the contract may be renegotiated; a review may be initiated or other legal action may follow, whilst the covering letter suggests that by entering into the contract, a possible review (the grounds for which appear to be wholly unsubstantiated) might be avoided.

BISL is particularly concerned about these emerging conditions and in some cases these may be seen as a result of the shifting policy contained within the Guidance published by DCMS for local licensing authorities. We would like to draw the Committee’s attention particularly to the introduction of special policies surrounding cumulative impact, not specified in the Act but where the most recent Guidance promotes special policies around concentration of sales by on trade outlets only.

Although the Licensing Act 2003 was designed to be deregulatory, there is a perception now amongst many of BISL’s members that licensing authorities and some responsible authorities have moved well beyond the application of the Act and the subsequent Guidance. It is the contents of local licensing policies rather than the actual legislation that is the main driver in some areas for the action of licensing authorities.

September 2008