

PRO-FORMA FOR CONSULTATION RESPONSES

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

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

We would like to hear your views on the Coalition Government's commitments on alcohol policy, to ensure that these are taken into account when each measure is implemented.

The consultation document can be viewed in full at:
<http://www.homeoffice.gov.uk/about-us/consultations/>

Please download this document and save it to your computer, fill in your responses in the tick boxes and text boxes provided and then email it back to us by 8TH September at:
Alcohol.consultation@homeoffice.gsi.gov.uk

Alternatively, this document can be printed and returned by post to:

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

If you have any problems completing the form or need an accessible version, please contact Helen Brewis on 0207 035 0054 or at Helen.brewis@homeoffice.gsi.gov.uk.

The information you send us may be passed to colleagues within the Home Office, the Government or related agencies. Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000, the Data Protection Act (DPA) 1998 and the Environmental Information Regulations 2004.

If you want other information that you provide to be treated as confidential, please be aware that, under the Freedom of Information Act, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

The following questions ask for some information about you. The purpose of these questions is to provide some context on your consultation responses and to enable us to assess the impact of the proposals on different groups of people. By providing this information you are giving your consent for us to process and use this information in accordance with the conditions set out above.

About you

What is your gender? (please tick one)

Female

Male

How old are you? (please tick one)

Under 18

18 – 24

25 – 34

35 – 54

Over 55

Where do you live? (please tick one)

North East

North West

South East

Yorkshire and the Humber

West Midlands

East Midlands

East of England

South West

London

Wales

Please tell us your occupation (if relevant)

Director of Quaker Action on Alcohol and Drugs (QAAD)

Please tell us which organisation you represent (if relevant)

Quaker Action on Alcohol and Drugs (QAAD)

Giving more local powers to refuse and revoke licences

Currently under the provisions in the 2003 Licensing Act there is a fundamental presumption in favour of granting an application for a licence to sell alcohol, which makes it difficult for local authorities to turn down applications. The Government wants to overhaul the licensing system to empower local councils and the police to clamp down on binge drinking hotspots and irresponsible retailers in order to tackle alcohol-related violence and anti-social behaviour. They also want to give local residents and community groups a greater say in licensing decisions to ensure they reflect the wishes of the local community and to consider whether the licensing objectives need to be widened so that health issues can be taken into consideration when making licensing decisions.

Key proposals outlined in the consultation document to deliver these objectives and the relevant consultation questions are listed below. These proposals are outlined in chapter 5 of the consultation document. Relevant paragraphs in the consultation document are noted alongside the proposals below.

Proposal:

- Give licensing authorities the power to refuse licence applications or call for a licence review without requiring relevant representations from a responsible authority (Paragraph 5.03).

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

The impact of this measure would be positive. The Licensing Authority carries a general responsibility for the safety and amenity of its residents and has a coordinating role in providing local services in response to need. This measure would restore the ability of the Local Authority to exercise its full functions, and it is healthy that this power should reside with a body that is ultimately electorally accountable.

Proposals (Paragraph 5.04):

- Reduce the evidential burden of proof required by licensing authorities in making decisions on licence applications and licence reviews.
- Remove the need for licensing authorities to demonstrate their decisions on licences 'are necessary' for (rather than of benefit to) the promotion of the Licensing Act objectives.

Consultation Question 2: What impact do you think reducing the burden of proof on licensing authorities will have?

We strongly support both of these measures. The level of evidence required to prove that a measure is necessary to achieve the licensing objectives is unrealistically high. There are so many factors involved in specific licensing decisions that it is difficult to prove the effect of any individual measure retrospectively, let alone prospectively. Licensing Authorities are mindful of their limited budgets and are understandably wary of litigation. Reducing the burden of proof will empower Licensing Authorities to take decisions in the interests of their communities. 'Promoting' the licensing objective is a sensible and practical alternative, and one that will require reasonable evidence to be cited.

Consultation Question 3: Do you have any suggestions about how the licence application process could be amended to ensure that applicants consider the impact of their licence application on the local area?

Yes

No

Maybe

Please outline any suggestions in the box below

It would have a positive effect if applicants were asked to assess local impact, particularly in areas of high density or where there are problems of nuisance, disorder, or issues of under-age drinking. This could be addressed through an open-ended question about the area, including one about other licensed premises, followed by a tick-box question with multiple choice categories relating to under-age drinking, noise, traffic, disorder, (and any others) that might be applicable. An open question could then ask what measures were proposed to address each potential problem area.

Proposal:

- Increase the weight licensing authorities will have to give to relevant representations and objection notices from the police (Paragraph 5.05).

Consultation Question 4: What would the effect be of requiring licensing authorities to accept all representations, notices and recommendations from the police unless there is clear evidence that these are not relevant?

The police are the best equipped agency to understand the ways in which licensed premises can impact on problems of crime, disorder and nuisance. They also have to consider their resources, which may not stretch to dealing with additional premises or additional hours without damaging other tasks. The likely effect of this measure is a reduction in nuisance and a reprioritizing of police time towards tackling crime rather than managing disorder.

Involving the community and their representatives

Proposal:

- Increase the opportunities for local residents or their representative groups to be involved in licensing decisions, without regard to their immediate proximity to premises (Paragraphs 5.07 and 5.08).

Consultation Question 5: How can licensing authorities encourage greater community and local resident involvement?

Residents cannot be expected to know their rights as interested parties under the Act unless they are informed of them. Information could be included in standard reports/bulletins that are issued to council tax payers, and it could be featured more prominently on websites. If the Licensing Authority is a responsible body and residents feel that their opinions have a conduit into a body that has its own powers, they may also be more inclined to join local panels, which seem to have had variable levels of success.

Consultation Question 6: What would be the effect of removing the requirement for interested parties to show vicinity when making relevant representations?

'Vicinity' has been widely interpreted. Residents are unlikely to take a case to court if they are judged not to live close enough to be classed as interested parties, which means that some valid concerns may not have been heard. The effect of the change would be to remove the current ambiguity and empower all residents who are affected by licensed premises to make representations. Current guidelines enable the Licensing Authority to consider whether representations are vexatious, which would enable appropriate judgments where necessary.

Public Health

Proposal:

- o Enable more involvement of local health bodies in licensing decisions by designating health bodies as a responsible authority and seeking views on making health a licensing objective (Paragraphs 5.10 - 5.12).

Consultation Question 7: Are there any unintended consequences of designating health bodies as a responsible authority?

Yes

No

Maybe

Please specify in the box below

We strongly support the suggestion that health bodies be classed as a responsible authority, for all the reasons that are laid out in the consultation document. Alcohol misuse is a health matter and the costs to the community are significant both in terms of finance and in human terms. Whilst we can think of no unintended consequences that would be sufficient to counter this change, it may be the case that local health providers and practices would need some guidance in this area, since it is a new responsibility, or it may be advisable for local practices to make joint representations. Both resourcing and focus would be needed for this.

Consultation Question 8: What are the implications in including the prevention of health harm as a licensing objective?

We would very much welcome public health being included as a fifth aim of the Licensing Act. This should be a responsibility rather than a discretionary power for Licensing Authorities. The very considerable health harms caused by alcohol are well attested. Aside from the acute and extreme harms, approximately a quarter of the population drink regularly above levels of risk. Public policy needs to have the reduction of health harm as a prime aim, both nationally and locally.

Previous national alcohol strategies have suffered from being weak, 'top down,' and reactive rather than preventive. Making the prevention of health harm a licensing objective would begin to address these problems. Licensing Authorities could consider and coordinate responses to on and off trade, which would enable them to tackle such problems as 'pre-loading' in a much more effective way.

There is much to be learned from experience in Scotland, where public health has been an objective for the past few years. Licensing Authorities have begun to develop ways of working with the preventive challenge. A review commissioned by Alcohol Focus Scotland in 2008 into how the health objective was working found that most local policies stated that:

- they wished to see premises thriving in the city but not at the expense of public health and wellbeing.
- they would have particular regard to the views of the relevant bodies responsible for, and interested in, the protection and improvement of public health. In some cases this included naming Drugs and Alcohol Action Teams (DATs) and agencies involved in child protection. (Licensing Law and the Public Health Objective – Review Paper M Plunkett mpc consultancy)

Such a framework would enable the health agenda to move forward south of the border. The review notes the importance of 'the duty placed on local Licensing Boards to consider the protection and improvement of public health when granting and renewing licenses.' (p 29), which gives Authorities the power to make specific decisions and recommendations about individual licences. For example, most of the Licensing Authorities mention:

- "the risk of harm to children's health, and ...that applicants... will be expected to demonstrate that they have given particular care to introduce measures designed to protect children's health while in or around their premises.
- Licence applicants, door supervisors and premises managers, as well as other staff employed in the premises, being vigilant at all times to the risks of excessive consumption.
- For staff to have a clear understanding of the offences committed in connection with the service of alcohol to children or persons who are drunk."

Admission of under-age people to age-restricted licensed venues and serving to 'blatantly intoxicated people' were attested in the KPMG study report for the Home Office in 2008 (Review of the Social Responsibility Standards for the production and sale of Alcoholic Drinks). Although both are currently illegal, the profit motive - and concern for staff safety in the case of sales to those who are already drunk – make these major and continuing issues. Retrospective enforcement through penalties is obviously insufficient to deal with the scale of the problem: Bellis's study of night-time drinkers (51% of whom self-assessed as drunk and intended to drink more) notes that in 2007 only one successful prosecution for selling to a drunk person occurred.

The inclusion of the prevention of health harm as an objective would help shift the balance from a wholly inadequate post hoc response to a preventive one. Licensing Authorities and licensees would need to work together to implement proactive practical measures. Those measures cited in the Scottish review of Licensing policies included systematic staff training, consistent and effective degrees of enforcement, consistent provision of food and snacks along with tap water and reasonably priced soft drinks, and staff alcohol workplace policies within off and on sales premises. Such practices could be suggested in Guidance Notes if the health objective were to be included – though the stimulation of local inventiveness and the empowering of local knowledge would be another positive implication of this necessary measure.

Consultation Question 9: What would be the effect of making community groups interested parties under the Licensing Act, and which groups should be included?

The effect of making community groups interested parties would be positive, since many charities or voluntary groups are in a position to be aware of the impact of licences, particularly on vulnerable groups. We suggest that faith-based bodies be included in the list, since many are involved in voluntary schemes or have town-centre premises.

Overhauling the appeals process for licence application determinations

The Government is considering options to tighten the appeals process and ensure that fewer appeals are heard in court and that, where possible, the power for determining licensing decisions remains with the licensing authority.

Proposal (Paragraphs 5.14 - 5.18)

- Amend the process of appeal to avoid the costly practice of rehearing licensing decisions.

Consultation Question 10: What would be the effect of making the default position for the magistrates' court to remit the appeal back to the licensing authority to hear?

It is a weakness of the current Act that Licensing Authorities (as well as responsible and interested parties) tend to be less well-funded than the alcohol industry, particularly large chains - and are less willing to run the risk of expensive litigation. The effect of this change would be to rebalance the system in a way that gave Licensing Authorities more effective powers to license. We agree that there should be appropriate safeguards but find this a desirable measure.

Appeals by applicants on licence reviews

Decisions taken by the licensing authority at a review hearing do not take effect until any appeal is disposed of. There is evidence to suggest that some decisions are appealed against purely to ensure that the premises is able to trade during a profitable period (e.g. Christmas), and that the appeal may often be withdrawn once this period had passed.

Proposal (Paragraph 5.19)

- The sanctions imposed by a licensing authority should come into force when the holder of the premises licence receives the determination of the decision from the licensing authority, and the sanctions should remain unless and until an appeal to the magistrates' court is successful.

Consultation Question 11: What would be the effect of amending the legislation so that the decision of the licensing authority applies as soon as the premises licence holder receives the determination?

The effect would be to prevent licensees using the appeal period to continue trading in the way that is outlined in the consultation document, and we support this measure.

Dealing with the problems of late night drinking

The Government wants to make sure that all local authorities have the power to address the pressures caused by extensive late night drinking, and the 24 hour licensing culture. The introduction of the Licensing Act has not given licensing authorities and local residents enough of a say in how late their pubs and clubs can stay open and the resulting crime and disorder has put pressure on police resources. More local flexibility is needed in determining closing times and setting the fees to reflect the costs of policing the late night economy.

Key proposals outlined in the consultation document to deliver this objective and the relevant consultation questions are listed below. These proposals are outlined in Chapter 6 of the consultation document. Relevant paragraphs in the consultation document are noted alongside the proposals below.

Early Morning Restriction Orders

Proposals (Paragraphs 6.03 and 6.04):

- The government intends to commence this power with a significant amendment to allow local councils to decide between which hours they would like to prevent premises from opening, according to what they believe to be most appropriate for their local area.
- The relevant legislation will also be amended so that an Early Morning Restriction Order could be created if it was felt to be “beneficial” for the promotion of the licensing objectives rather than if it is felt to be “necessary” as is currently the case.

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

The impact of this measure would be to enable local democracy. Studies indicate that the complexion of these issues varies between rural areas, small towns, and inner cities - and it is appropriate that Licensing Authorities should be able to respond flexibly. In those areas where problems are acute or systematic, a reduction in nuisance, crime and disorder, and the releasing of police resources to other priorities are likely consequences.

Alcohol Disorder Zones

Proposal (Paragraph 6.07):

- Repeal the unpopular power to establish Alcohol Disorder Zones and allow licensing authorities to use a simple adjustment to the existing fee system to pay for any additional policing needed during late-night opening.

Consultation Question 13: Do you have any concerns about repealing Alcohol Disorder Zones?

Yes

No

Maybe

Please specify in the box below

Cumulative Impact Policies

Proposal (Paragraph 6.09):

- Simplify Cumulative Impact Policies to allow licensing authorities to have more control over outlet density.

Consultation Question 14: What are the consequences of removing the evidential requirement for Cumulative Impact Policies?

We wholly support the reasoning in the consultation document. It is extremely difficult for Licensing Authorities to find evidence relating to specific applications and at present these powers are more theoretical than actual. The effect would be to enable Licensing Authorities to address cumulative impact much more effectively.

Late night levy

Proposals (Paragraphs 6.10-14):

- Legislate to enable licensing authorities to charge a late night levy to help pay for the additional cost of policing the local night-time economy which arises as a result of the sale of alcohol, where this is deemed necessary.
- The levy would be introduced as an additional charge for licensed premises that local authorities have the discretion to introduce. This would apply to premises that have a licence to open beyond a specified time (e.g. all premises that open after midnight on any day of the week).
- It may be possible to use the late night levy either as a means of recovering additional costs related to late night policing as a result of the sale of alcohol (in which case it would be determined by the additional cost of policing in the area it is applied, and the number of premises the cost is divided between). It may also be possible to allow the local authority some discretion over the amount that is charged for the levy or for them to use some of the proceeds to fund additional services such as taxi-marshalling or street cleaning.

Consultation Question 15a: Do you agree that the late night levy should be limited to recovery of these additional costs?

Yes

No

Maybe

Please outline your reasons in the box below

We see the merits of a fee system for additional policing and other costs. We agree that these should not be borne by Local Authorities who need to work within ever tighter budgets, and are in favour of Authorities having the latitude to include other service costs within the levy.

However, there are some problems with this approach. The full costs of policing and clean-up would be high, and such a levy would be best described as a contribution. It is also the case that even if some costs are paid, policing disorder distracts attention from other priorities, and existing legislation about offences of drunkenness are not enforced because of pressure of numbers. More fundamentally, this emphasis on nuisance and crime does not address health costs and concerns, as well as the human dimension. For these reasons we believe measures of this nature need to be balanced by the prevention of health harm as another objective of licensing (see response to question 10).

Consultation Question 15b: Do you think that the local authority should be given some discretion on how much they can charge under the levy?

Yes

No

Maybe

See previous response.

Consultation Question 16: Do you think it would be advantageous to offer reductions for the late night levy to premises which are involved in schemes to reduce the additional policing costs such as Best Bar None?

Yes

No

Maybe

Please outline your reasons in the box below

We can see the advantages of providing incentives for the industry to cooperate and perhaps innovate in these areas. However, responsible selling practices need to be expected as standard. There may be a case for piloting different approaches in order to measure effectiveness.

Consultation Question 17: Do you agree that the additional costs of taxi-marshalling or street cleaning should be funded by the late night levy?

Yes

No

Maybe

Please outline your reasons in the box below

Again, we see the benefits of this proposal. The importance of swift transport from drinking areas is endorsed by international evidence and the Scottish experience (see MPC report page 21). Street cleaning is important for amenity and health. However, it is also the case that the noise of this impacts on local residents, since it usually takes place in the early hours of the morning.

Amending the statutory guidance which accompanies the Licensing Act to make it clear that measures to limit opening hours can be considered

The Government intends to amend the guidance to make it clear to local areas that they can make decisions about the most appropriate licensing strategy for their area. Licensing authorities will be encouraged to consider using measures including fixed closing times, staggered closing times and zoning where they are appropriate for the promotion of the licensing objectives in their area.

Proposal (Paragraph 6.17)

- Amend guidance to make it clear to local areas that they can make decisions about the most appropriate licensing strategy for their area.
- Enable licensing authorities to have flexibility in restricting or extending opening hours to reflect community concerns or preferences.

Consultation Question 18: Do you believe that giving more autonomy to local authorities regarding closing times would be advantageous to cutting alcohol-related crime?

Yes

No

Maybe

Please explain why in the box below

We find this wholly desirable for all the reasons outlined in the consultation document.

Temporary Event Notices (TENs)

A temporary event notice (TEN) is a notification to the licensing authority that an individual intends to conduct licensable activities on a temporary basis for a period not exceeding 96 hours. There are several other statutory requirements which relate to a TEN, which restrict the number of persons allowed onto the premises, and the number of TENs that can be applied for in a year.

The TEN must be submitted to the licensing authority and the police at least ten working days in advance of the planned event. Only the police can object to a TEN, and only on crime prevention grounds. The police have 48 hours after the receipt of the TEN to object, and (unless the premises user agrees to modify the TEN) the licensing authority must hold a hearing to consider any objections that have been received. If the licensing authority decides that the objection is valid, it must issue a counter notice to the applicant at least 24 hours before the beginning of the event to prevent it going ahead

The Government is concerned that some events held using TENs are not sufficiently regulated and give rise to alcohol-related crime and anti-social behaviour and wants to consider proposals to ensure that TENs are more effective. Key proposals outlined in the consultation document to deliver this objective and the relevant consultation questions are listed below. These proposals are outlined in chapter 7 of the consultation document. Relevant paragraphs in the consultation document are noted alongside the proposals.

Proposals (Paragraphs 7.04-7.07):

- Substantial overhaul of the system of TENs to give more time for objections to be raised, enable all responsible authorities to object, increase the notification period and reduce the number that can be applied for by personal licence holders and in the same vicinity.

Consultation Question 19: What would be the consequences of amending the legislation relating to TENs so that:

a. All the responsible authorities can object to a TEN on all of the licensing objectives?

We do not have specific knowledge of these areas but find all the proposals desirable for the reasons outlined.

b. The police (and other responsible authorities) have five working days to object to a TEN?

c. The notification period for a TEN is increased, and is longer for those venues already holding a premises licence?

d. Licensing authorities have the discretion to apply existing licence conditions to a TEN?

Consultation Question 20: What would be the consequences of:

- a) Reducing the number of TENs that can be applied for by a personal licence holder to 12 per year?**

- b) Restricting the number of TENs that could be applied for in the same vicinity (e.g. a field)?**

Protecting children from the harm of alcohol

The quantity of alcohol consumed by children who drink alcohol has increased significantly in the past decade. Children's drinking is putting increasing pressure on the police and the health services. High levels of alcohol consumption are associated with a range of health harms and high risk behaviours including unprotected sex and offending.

Despite the growing problem of children's alcohol misuse and the increasing impact on public services, not enough has been done at the local level to limit the availability of alcohol to children. The current powers do not go far enough to prevent the selling of alcohol to children. Although pupils' access to alcohol is typically by being given it by friends or parents, about half of pupils who have ever drunk also say that they do buy alcohol, despite being well below the age when they can legally do so.

Key proposals outlined in the consultation document to deliver this objective and the relevant consultation questions are listed below. These proposals are outlined in chapter 8 of the consultation document. Relevant paragraphs in the consultation document are noted alongside the proposals below.

Proposals (Paragraphs 8.05-06):

- Introduce tougher sentences for persistent underage sales.
- Extend the period of voluntary closure that can be given by the police as an alternative to prosecution

Consultation Question 21: Do you think 168 hours (7 days) is a suitable minimum for the period of voluntary closure that can be flexibly applied by police for persistent underage selling?

Yes

No

Maybe

Please give your reasons in the box below

The current period of 48 hours does not present a significant penalty to poor traders. As a sanction it could be regarded as a risk worth taking, given the low detection and prosecution rate. We would support this change.

Consultation Question 22: What do you think would be an appropriate upper limit for the period of voluntary closure that can be flexibly applied by police for persistent underage selling?

Proposal (Paragraph 8.07):

- Amend the legislation to ensure that all premises found to be persistently selling alcohol to children will have their licence reviewed, regardless of whether they have opted for voluntary closure or prosecution.

Consultation Question 23: What do you think the impact will be of making licence reviews automatic for those found to be persistently selling alcohol to children?

The likely effect of this would be to raise levels of compliance, as this would be a significant sanction in itself and also a matter of public record, which might influence responsible traders.

Banning below-cost sales

There has been a growing concern over the last few years about how cheaply some alcoholic drinks are being sold. We are also aware of the public's unease and their perception of heavily discounted alcohol being a key contributory factor to unacceptable levels of alcohol-related crime and disorder - in many cases as a result of "pre-loading" in preparation for a night out.

We are committed to ensuring that local people are able to enjoy all parts of their community without feeling intimidated by those who have drunk too much alcohol and to reducing the burden on frontline services of dealing with drunken behaviour.

Key proposals outlined in the coalition document to deliver this objective and the relevant consultation questions are listed below. These proposals are outlined in chapter 9 of the consultation document. Relevant paragraphs in the consultation document are noted alongside the proposals below.

Proposal (Paragraph 9.03)

- Ban the sale of alcohol below cost price.

Legislative options for banning below-cost sales

The definition of 'cost' has implications for the policy, powers required, enforcement and different incentives. The 'cost' of an alcoholic product differs between retail businesses as they negotiate their own prices with suppliers, have different internal cost structures and may base overall profitability on a basket of goods.

There are a number of ways in which such a ban might work, and Government must find an approach which is compatible with EU trade and competition laws and realistic to enforce. Most EU countries which have tried similar policies have banned selling below 'net invoice price' where the reference price is broadly the unit price on the invoice.

Consultation Question 24: For the purpose of this consultation we are interested in expert views on the following. Please give your views in the box below each point.

a. Simple and effective ways to define the 'cost' of alcohol

It is helpful that the price of alcohol is being addressed, as affordability is a driver for alcohol problems of most kinds. However, we do not think an emphasis on cost price is the most effective way to address the problem. A health agenda puts the price the consumer pays per unit of alcohol as the central issue that needs to be addressed in a consistent way.

Market considerations about production costs tend to skew this agenda, not least because of the arguments outlined in the consultation document, and the fact that major suppliers can buy alcohol in bulk at lower unit costs than smaller traders.

If a 'below cost price' approach is to be taken, however, promotion and advertising costs should be factored into the equation.

b. Effective ways to enforce a ban on below cost selling and their costs

c. The feasibility of using the Mandatory Code of Practice (Mandatory Licensing Conditions) Order 2010 to set a licence condition that no sale can be below cost, without defining cost.

Reducing burden and bureaucracy of licensing and covering its cost

Licence fees have not been increased since their introduction and therefore some sort of increase is long overdue. This would be hugely welcomed by licensing authorities who have long argued that their enforcement costs exceed their fee income.

The Government also acknowledges that adopting a tougher licensing regime as outlined in these proposals may lead to an increase in the number of licence reviews conducted, and a subsequent risk of increased burden on local licensing authorities. Any additional burdens on licensing authorities should also be reflected in the level of licence fees.

Key proposals outlined in the consultation document to deliver this objective and the relevant consultation questions are listed below. These proposals are outlined in chapter 10 of the consultation document. Relevant paragraphs in the consultation document are noted alongside the proposals below.

Increases in licensing fees

Proposal (Paragraph 10.01)

- Enable licensing authorities to increase licence fees so that they are based on full cost recovery.

Consultation Question 25: Would you be in favour of increasing licence fees based on full cost recovery, and what impact would this have?

We support this proposal (see also response to question 15a). The impact would be to shift the costs from the taxpayer, which is highly desirable.

However, if minimum unit price policies are not adopted, 'cost recovery' should bear some relation to the price for which alcohol is sold in premises, since this is linked with problems of both disorder and health.

Automatic revocation of licence for non-payment of fees.

Proposal (Paragraph 10.03)

- Enable licensing authorities to revoke licences due to non-payment of fees.

Consultation Question 26: Are you in favour of automatically revoking the premises licence if the annual fees have not been paid?

Yes

No

Maybe

Please explain why in the box below

Recovery of fees is another tax-payer cost. The balance needs to shift to create incentives for compliance. It is presumed that reasonable periods of notice would be given.

Deregulation

In April 2010, the previous administration enacted a Mandatory Code of Practice (Mandatory Licensing Conditions) Order 2010 for Alcohol Retailers, which was intended to be introduced in two stages. The first stage, which took place in April 2010, imposed conditions on licensed premises to:

- (a) Ban irresponsible promotions in the on-trade
- (b) Ban dispensing alcohol directly into the mouths of customers
- (c) Ensure that free tap water was available in all licensed premises in the on-trade (Paragraph 10.04)

Consultation Question 27: Have the first set of mandatory conditions that came into force in April 2010 had a positive impact on preventing alcohol-related crime?

Yes

No

Maybe

Please explain why in the box below

It is too early to tell what the impact of these measures has been, and indeed a first step would be a proper assessment of whether they have been consistently implemented. As far as we know, this has not taken place. However, it is apparent that these practices fostered irresponsible consumption, and that the previous voluntary codes had not prevented their proliferation.

The legislation for the Mandatory Code contained two further conditions for licensed premises. These will be introduced on 1 October 2010. These conditions were delayed to give business more time to prepare and will mandate all licensed premises to:

- (d) Ensure they have an age verification policy in place
- (e) Ensure they are able to offer smaller servings of beer, wine and spirits (Paragraph 10.05).

As the regulations have been enacted, it is not possible to prevent d) and e) coming into force in October. However, the Government believes strongly that regulation

should only be used as a last resort, and that alternatives to regulation should be used wherever possible. We want to take the opportunity of this consultation to give people the chance to comment on the necessity, cost, and impact of the provisions outlined in the mandatory code (Paragraph 10.06).

Consultation Question 28: Would you support the repeal of any or all of the mandatory conditions?

Yes

No

Maybe

Please explain why in the box below

All of these conditions are not examples of difficult-to-reach best practice, but minimum standards that could reasonably be expected of any responsible trader. To repeal any of them would be to reverse the painfully slow progress that has been made over the last few years to tackle the harms of alcohol misuse - and send a message to irresponsible sellers that they do not need to change, whilst discouraging those who do aim to be socially responsible.

It is vital that the requirement for an age-verification policy remains mandatory. The fact that the industry needed time to reach compliance with a standard of not serving minors when this is actually against the law (rather than being simply an industry code) shows how weak and ineffective self-regulatory mechanisms have been.

The Mandatory Code requirements do not represent a burden for responsible parts of the industry, but target drinking venues where alcohol is cheap and night outlets where the encouragement of drunkenness is both implicit and explicit. This territory was fully covered by the independent KPMG report commissioned for the Home Office by an administration which was also reluctant to take a mandatory approach. The KPMG report found:

‘Our observation studies in eight locations have revealed many irresponsible and harmful practices. Moreover, these poor practices are more prevalent in venues frequented by people apparently under the age of 18.’ (page 9)

By contrast, their observation arising from one of the locations was that *‘In the rural areas, good practice was observed in many of the local pubs.’ (page 17)*

KPMG also noted that standards produced centrally by companies tended not to feed into practice on the ground: *‘... but it is rare for the Standards to be referred to per se in any individual member’s code of conduct’.*

The conclusion of this extensive investigation and report makes a recommendation for effectiveness that seems to chime well with the Coalition’s commitment to localism. This report was a significant piece of work that no doubt involved considerable resources. We hope that its conclusion will be adopted. *‘We have concluded that the Standards should be strengthened and enforced more effectively by Government, industry and other agencies working more closely in partnership at a national and local level. Further, we have concluded that Government should spearhead this initiative in the short term but could place local government in the pivotal role as implementer. We see a necessary pre-condition of this model being a set of mandatory conditions and other guidance that should be put in place locally to help ensure compliance. Therefore, our preferred option is a model based on a local government led approach, but working to national standards and conditions laid down by central Government.’ (p11)*

The Government is also interested in further de-regulating the Licensing Act in order to reduce the administrative burden both on business and licensing authorities. For example the application forms for both a premises licence and a TEN could be reduced, and the requirement on the licensing authority to determine and publish a statement of licensing policy (Paragraph 10.07).

Consultation Question 29: Would you support measures to de-regulate the Licensing Act, and what sections of the Act in your view could be removed or simplified?

Yes

No

Maybe

Please explain why in the box below

We sympathise with the burden that can be placed on Licensing Authorities by the need to produce and consult on licensing statements. However, in our observation this does provide a catalyst for considering local issues in the round, and if the Licensing Act is modified, such a process may well be positive. If a levy is introduced, there may be an argument for some of the costs of this exercise being included in it.

Rather than the de-regulation of this measure, we wonder whether the requirements could be more flexible (for example, a discretion for licensing policies to last for 4 or 5 rather than three years).